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ENVIRONMENTAL ASSESSMENT BOARD

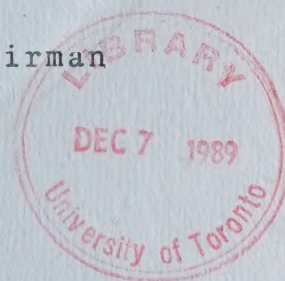
VOLUME: 162

DATE: Tuesday, November 28th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -


IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, November 28th,
1989, commencing at 8:30 a.m.

VOLUME 162

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT
	BOARD
MR. E. HANNA)	ONTARIO FEDERATION OF
DR. T. QUINNEY)	ANGLERS & HUNTERS
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MS. N. KLEER)	and WINDIGO TRIBAL COUNCIL
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MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
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	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE)	GRAND COUNCIL TREATY #3
MS. S.V. BAIR-MUIRHEAD)	
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

(iii)

APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

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1 ---Upon commencing at 8:35 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Ladies and gentlemen, today we are going
5 to continue this morning with Mr. Hanna's
6 cross-examination until lunch time and then we are
7 going to start with another party in the afternoon.

8 Towards the end of the day we are going
9 to listen, Mr. Hanna, to your submissions with regards
10 to counsels' relationships with the media, and then
11 following that Mr. Cassidy may wish to respond, and
12 following that we are going to go into the scoping
13 session for Panel 17.

14 And at the end of all that, we are going
15 to break for the day prior to dinner. So we don't
16 intend to come back, we intend to go right through and
17 then break for the day.

18 Thank you.

19 JOHN EDWARD OSBORN,
20 JOHN CARY,
21 DAVID GORDON,
22 WILLIAM STRAIGHT,
23 DAVID EULER,
24 JAMES ALEXANDER MacLEAN,
25 TOM TWORZYANSKI, Resumed

24 MR. HANNA: Mr. Chairman, I have a number
25 of varied topics, it will be quite short, and I will

1 just go through them sequentially. I will just
2 indicate each one as I start them. First, I would like
3 to deal with Mr. Cary with respect to audits, several
4 quick questions associated with that issue.

5 CONTINUED CROSS-EXAMINATION BY MR. HANNA:

6 Q. And specifically, Mr. Cary, what I
7 would like to deal about is the role of audits in
8 meeting or in measuring compliance with non-timber
9 objectives in timber management plans. First of all, I
10 would like to look in your witness statement at
11 paragraph No. 6.

12 MR. CARY: A. What page number is that?

13 Q. It's page 9 and 10. Specifically I
14 am looking on page 10, the phrase there that says that:

15 "The purpose of the audit program is to
16 substantiate that objectives are being
17 achieved."

18 A. Yes.

19 Q. I would like to know what process is
20 proposed to be used to determine whether a qualitative
21 objective is being achieved, and I think the
22 qualitative objectives in timber management plans are
23 those pertaining to non-timber values?

24 A. The operational audit process that I
25 talked about last week was to do with timber management

1 operational audits and the operational audits, as I
2 said at the time, are focused on compliance with
3 objectives, with standards and I did not talk about the
4 non-timber or the wildlife or fisheries audits.

5 Are you referring to fisheries audits or
6 wildlife audits or timber management audits, would be
7 my first question?

8 Q. Perhaps you can clarify to me what
9 you are referring to in paragraph 6?

10 A. Timber management audits.

11 Q. And am I to take then from what you
12 are saying that the timber management audits will serve
13 no purpose in determining compliance with respect to
14 non-timber values?

15 A. Non-timber values, meeting objectives
16 in timber management plans?

17 Q. Well, let's be very specific. Let's
18 look at the Red Lake Timber Management Plan, there is
19 an objective. I don't have the exact number here but
20 it reads:

21 "To ensure the coordination of timber
22 management activities so that the
23 long-term..."

24 Excuse me, I retract that. The objective
25 is as stated in terms of integrated resource

1 management -- well, in fact, I was reading it:

2 "To ensure the coordination of timber
3 management activities so that long-term
4 benefits are optimized and conflicts
5 between other programs are minimized."

6 I want to know what role the audit
7 process has in ensuring that that objective is
8 achieved?

9 A. The timber management operational
10 audit does not examine per se the non-timber
11 objectives. As Dr. MacLean said earlier, the
12 examination of the guidelines or the application of the
13 guidelines and conformance with the guidelines is
14 examined during plan review and then examined by the
15 regions when they conduct fisheries and wildlife
16 audits.

17 But the timber management audit that I
18 talked about has a pretty narrow focus on the timber
19 management program. And those wildlife objectives,
20 fisheries objectives that appear in the plan will be
21 monitored, but not in a timber management audit per se.

22 Q. Thank you. I would like to turn now
23 to a different subject. It is one that has been
24 brought to my attention repeatedly going through
25 northern Ontario when people find out thgat I am

1 involved with this and say: Well, make sure you talk
2 about this issue. And it is one that I, therefore, by
3 popular demand bring forward; and, that is, the
4 question of jobbers and the fact that how jobbers are
5 dealt with in terms of the compliance monitoring
6 process the Ministry has set up.

7 And perhaps just as a bit of background,
8 what the people have said to me is that they see that
9 the actual licence holder often will be very
10 responsible in the way that they operate, but then they
11 will give a third party cutting licence and those --

12 THE CHAIRMAN: Mr. Hanna, as you can
13 appreciate, most of this is hearsay.

14 MR. HANNA: I appreciate that. I am
15 going to --

16 THE CHAIRMAN: And it doesn't have a lot
17 of probative evidentiary value as far as this Board is
18 concerned.

19 MR. HANNA: I appreciate that's strictly
20 hearsay, Mr. Chairman. I am just trying to set the
21 background to the context within which the witness to
22 answer the question. I'm not suggesting that this is
23 the facts. This is what has been brought to my
24 attention, I realize it's hearsay.

25 Q. I was going to ask you, Mr. Cary,

1 about your view on this particular matter. Now, have
2 you had this type of concern brought to your attention
3 in terms of jobbers and the practices of jobbers in
4 terms of environmental - how do you say - conscious
5 timber management?

6 MR. CARY: A. No, I haven't.

7 Q. Has anyone else on the panel been
8 encountered with the allegation that there is problems
9 with respect to jobbers not being as environmentally
10 responsible as the principal licence holder?

11 DR. EULER: A. I have encountered that
12 allegation.

13 Q. Has it gone further than that, Dr.
14 Euler?

15 A. No.

16 MR. HANNA: Perhaps, Mr. Chairman, I will
17 have to leave it until another time.

18 Q. Now, Mr. Cary, back to your witness
19 statement. In paragraph No. 7 it indicates that
20 through the formal review of the forest management
21 agreements that forest companies are required to ensure
22 their obligations are met. That's the check, the
23 feedback in the system?

24 MR. CARY: A. Could you explain -- I
25 don't quite understand your question or your statement.

1 Q. I haven't asked the question yet.

2 A. Oh, sorry.

3 Q. I am looking specifically at the
4 statement:

5 "On forest management agreement forests a
6 formal review of the FMA holder's
7 obligation is made every five years."

8 And the purpose for that is: That is, if
9 you will, the check in the system, every five years
10 they are reviewed to see if they are meeting their
11 obligations?

12 A. Well, that's not the only check.

13 Q. I didn't suggest that, but that is a
14 check.

15 A. Yes, that's a check.

16 Q. Now, to the best of your knowledge
17 has there ever been an FMA holder accused of not
18 fulfilling its obligations in terms of environmental
19 and non-timber value protection?

20 A. Mr. Tworzyanski gave the evidence
21 with regard to FMAs specifically, so may I give that
22 question to him?

23 Q. Certainly.

24 MR. TWORZYANSKI: A. Could I have that
25 question again?

1 Q. Sure. Do you see where I am
2 referring to in the witness statement?

3 A. Yes, I have that.

4 Q. To the best of your knowledge has
5 there ever been an FMA holder accused of not fulfilling
6 its obligations in terms of environmental and
7 non-timber value protection?

8 A. Not to my knowledge. I haven't heard
9 any accusations to that effect.

10 Q. Given the qualitative nature of these
11 in the timber management plans, the fact that they are
12 expressed in qualitative objectives, is it unreasonable
13 to expect otherwise in the future?

14 A. That what is expressed qualitatively
15 in the timber management plan?

16 Q. Environmental and non-timber values.

17 A. I am sorry, you are going to have to
18 be a little more clear.

19 Q. Well, we were talking about the fact
20 that in timber management plans the environmental and
21 non-timber values are set out in qualitative terms.

22 MS. MURPHY: No --

23 MR. TWORZYANSKI: You are going to have
24 to be -- I can't follow you at all, I'm sorry.

25 MR. HANNA: Q. Are you familiar with the

1 objectives in the Red Lake Timber Management Plan that
2 deal with non-timber and environmental values?

3 MR. TWORZYANSKI: A. No, I'm not.

4 Q. Are you familiar that non-timber
5 values and environmental concerns are generally in
6 timber management plans in qualitative terms?

7 A. No, I'm not.

8 Q. That's fine. Do the forest
9 management agreements include specific provisions in
10 terms of environmental protection that are stated in
11 terms that can be enforced by law?

12 THE CHAIRMAN: Sorry, run that by us
13 again?

14 MR. HANNA: Do the forest management
15 agreements include specific provisions in terms of
16 environmental protection that are stated in terms that
17 can be enforced by law?

18 MR. TWORZYANSKI: I can --

19 THE CHAIRMAN: Well, just a moment, let's
20 back up before you answer that. You acknowledge I
21 think, Mr. Hanna, that the forest management agreements
22 are agreements between two parties and there are
23 certain other types of enforcement mechanisms that the
24 Crown would have pursuant to the Crown Timber Act and
25 perhaps even other statutes under the environmental

1 statutes. So when you mean enforceable by law, what do
2 you mean, can charges be laid under various statutes or
3 what?

4 MR. HANNA: I am aware certainly that's
5 the case, Mr. Chairman. I was thinking more with
6 respect to the contract itself.

7 In other words, if there is a provision
8 within the contract to comply with this contract you
9 have certain obligations and, therefore, if you were to
10 fail with those obligations you would not be in
11 compliance with that contract. That's the gist and
12 that's my understanding of what it contains.

13 THE CHAIRMAN: Are you suggesting that it
14 is different than any other contract, any other type of
15 contract?

16 MR. HANNA: No, not at all. The fact of
17 the matter is that one of the checks, one of, if you
18 will, points of control in terms of compliance is
19 through the forest management agreement process.

20 And so what I am saying here is: We have
21 got the forest management agreement sitting there as
22 one of the operative tools in terms of compliance, is
23 there anything in those forest management agreements
24 that provide leverage to the Ministry in terms of
25 assuring that the environmental concerns that have been

1 the subject of this hearing can be in fact forced by
2 law.

3 THE CHAIRMAN: Well, we have heard; have
4 we not, through other witnesses that in the event that
5 there are breaches of the agreement the Ministry has
6 the power not to renew it.

7 MR. HANNA: Yes, we certainly heard that,
8 Mr. Chairman, I agree with that, and that's in fact the
9 point that I am getting at. So that is the -- what the
10 Ministry has said, that's how we deal with it, we have
11 this ability to retract the forest management
12 agreement.

13 My point is: Is one of the bases to
14 retract that agreement the fact that you are not in
15 compliance with certain environmental codes of
16 practice, whatever, that --

17 THE CHAIRMAN: It may be more than just
18 environmental, it may be breaching the terms of the
19 agreement, period. It may be terms that are
20 non-environmental terms; would that not be that case?

21 MR. HANNA: Certainly. But I am trying
22 to hear not -- I appreciate there is all those other
23 obligations that come within that contract. I am
24 trying now to deal with those obligations that deal
25 specifically with environmental concerns.

1 THE CHAIRMAN: Well, Ms. Murphy, perhaps
2 you -- I mean, this is really a legal question as to
3 the enforceability of the contract. I am not sure that
4 any of these witnesses are necessarily qualified to
5 answer that.

6 MR. HANNA: I did not ask about
7 enforceability of a contract, and I appreciate that's a
8 legal question, Mr. Chairman.

9 What I am asking is: These people are
10 giving evidence in terms of how they go about
11 compliance, and I am asking with respect to compliance
12 and environmental concerns is there, through the forest
13 management agreement process, in their experience in
14 trying to enforce this process, provisions that would
15 provide for dealing with environmental concerns?

16 MS. MURPHY: Well, I think our difficulty
17 is really basically two things. First of all, as far
18 as enforceability of this contract or anything else, it
19 is the same as any other contract.

20 I think our difficulty is that my friend
21 is asking whether there is some mechanism to ensure
22 compliance with environmental concerns. That is
23 undefined, I don't think anyone has -- I certainly
24 don't understand what my friend is asking these people
25 to comment on, compliance with what in particular.

1 I think it is unanswerable in the way the
2 question is put.

3 THE CHAIRMAN: What do you mean by
4 environmental concerns?

5 MR. HANNA: Well, I hate to go through
6 the whole evidence of this hearing, but let's take a
7 very simple one, a water crossing.

8 THE CHAIRMAN: If they breach a
9 prescription regarding the water crossing, they build a
10 bridge improperly, they site it in the wrong place not
11 in accordance with the plan?

12 MR. HANNA: Right. And it happens
13 repeatedly and whatever, over the course of the
14 agreement.

15 THE CHAIRMAN: Okay. Mr. Cary, what
16 happens if that occurs with the forest management
17 agreement?

18 MR. TWORZYANSKI: Okay, Mr. Chairman.
19 The forest management agreement requires the FMA holder
20 to manage the lands in accordance with the timber
21 management plan. So if by inference any of the
22 conditions or prescriptions to the timber management
23 plan are environmentally related, they would then be
24 enforceable under the agreement, if that's what you are
25 getting at.

1 But the agreement itself does not
2 specifically speak to environmental concerns, it wasn't
3 designed that way.

4 THE CHAIRMAN: Well, let's just take it
5 the one step further. So suppose there are some
6 breaches of the plan in the sense that they build a
7 bridge in the wrong place or they construct it
8 inappropriately in accordance with the guidelines and
9 that is found out by the Ministry, it is discovered by
10 the Ministry, what happens then with respect to the
11 agreement?

12 MR. TWORZYANSKI: Well, a number of
13 things could happen. First of all, you would look at
14 pertinent legislation dealing with that to see if it is
15 appropriate to either lay charges or apply penalties or
16 if it --

17 THE CHAIRMAN: What's that, the Lakes and
18 Rivers...

19 MR. TWORZYANSKI: Lake and Rivers would
20 be one possibly, Public Lands perhaps, a Crown Timber
21 Act in terms of the timber aspect of it.

22 THE CHAIRMAN: Okay. And you either lay
23 your charges or you don't lay your charges. But what,
24 if anything, happens with respect to the agreement?

25 MR. TWORZYANSKI: In terms of the

1 agreement, I would suspect - I haven't had the
2 experience to deal with this - I would suspect that if
3 a series of violations of what is laid out in the
4 planning documents would continue to occur then again,
5 taking this into the future, there is a possibility the
6 agreement would not be renewed for a further term,
7 perhaps. That will be the recourse.

8 MR. HANNA: Thank you.

9 Q. As part of the annual reporting
10 requirements, is it mandatory for the FMA holder to
11 report on the achievement of non-timber objectives?

12 MR. TWORZYANSKI: A. No, it isn't.

13 Q. What information pertaining to
14 environmental considerations will be mandatory in the
15 annual report?

16 THE CHAIRMAN: Well, once again, you
17 can't ask a question like that in general terms dealing
18 with a term like environment when we are dealing with a
19 timber management plan that may have all kinds of
20 specific environmental overtones. That's essentially
21 the timber management plan.

22 MR. HANNA: Q. Let us continue then with
23 the example that we were using, the river crossing
24 example. Will it be mandatory to report in the annual
25 report non-compliance with respect to, say, river

1 crossings?

2 MS. MURPHY: Can we just clarify which
3 annual report we are talking about right now. I don't
4 know.

5 MR. HANNA: I didn't know there was more
6 than one. I am talking about the annual report that's
7 regularly prepared, as I understood it, by the
8 individual holder.

9 MS. MURPHY: So just so that we are
10 clear, we are talking about the annual reports required
11 under the timber management planning process. Thank
12 you.

13 MR. HANNA: Yes, that was my intention.

14 MR. TWORZYANSKI: Okay. Your question
15 again was...?

16 MR. HANNA: Q. What requirements are
17 there within the annual reporting process to deal with
18 the type of examples we just described in terms of the
19 bridge that's built in the wrong situation or there has
20 been an environmental problem associated with them?

21 MR. TWORZYANSKI: A. There are no
22 specific requirements to report that. That would,
23 however, be reported through the area inspection
24 process that Mr. Cary described earlier; unless it was
25 a violation of an area of concern, then it would turn

1 up in Table 4.12.X as a report of non-compliance with a
2 prescription in an area of concern.

3 Q. But in the annual report -- maybe you
4 can just explain to me, you have got your area
5 inspection report.

6 A. Yes.

7 Q. How does that relate to your annual
8 report, are all those appended to the annual report?

9 A. No, no, there would be too many to
10 append to an annual report. Those are on file at the
11 district office, they are not appended to the annual
12 report, nor is any kind of a summary made to be part of
13 the annual report or required to be at this point.

14 Q. Thank you.

15 Mr. Cary, perhaps it is either you or Mr.
16 Tworzyanski, you can shift these back and forth between
17 you, you are both I believe responding to these
18 paragraphs.

19 Paragraph No. 9 -- excuse me, paragraph
20 No. 10, I believe. Paragraph No. 10 indicates that:

21 "By setting measurable and quantifiable
22 targets in a formal way it increases the
23 likelihood the objectives will be met."

24 Do you see that?

25 MR. CARY: A. Yes, I do.

1 Q. Do these comments also pertain to
2 non-timber values?

3 A. Yes.

4 Q. Can we turn to paragraph 14, please.

5 A. I have that.

6 Q. Now, it indicates here that one of
7 the values of the annual and five-year reports will be
8 in the review of this EA in six years?

9 A. They will be used as part of the
10 review process.

11 Q. Is it your expectation that these
12 reports will provide sufficient information in terms of
13 environmental effects - and, again, if we want to take
14 a specific example, the example we just dealt with - to
15 make quantitative predictions of future potential
16 impacts?

17 A. The annual report and the state of
18 the forest report that Dr. Osborn talked to are
19 specific to timber management, and so when you talk
20 about environmental, again I am having trouble with
21 that one, but they report about timber management and
22 the evidence describes the content of the report.

23 Is that what you are talking about when
24 you say environment?

25 Q. I think the question is quite

1 specific and I think we were talking about -- we tried
2 to pick a specific example that was brought forward.
3 Will we have sufficient information through this
4 reporting process to be able to talk about real effects
5 rather than potential effects in six years?

6 A. These are provincial reports.

7 THE CHAIRMAN: Well, you will have real
8 effects in the sense that the reports contain
9 information about past occurrences, those are actual
10 occurrences; are they not?

11 MR. HANNA: Yes. It is a matter of
12 whether we are going to have enough information, Mr.
13 Chairman, in a specific way that we can know
14 specifically what -- when they use the terms magnitude,
15 frequency, intensity and duration of those impacts
16 actually are, so that when we look at the process in
17 six years we will be able to cogently deal with those
18 in terms of what has actually occurred as opposed to
19 the situation we are in now talking about potential
20 effects all the time.

21 THE CHAIRMAN: Well, they have indicated
22 essentially that the reports are going to be based on
23 information and documentation of actual occurrences.
24 Is that not basically what you have said?

25 MR. CARY: Yes. Well, Dr. Osborn said

1 that.

2 MR. STRAIGHT: Mr. Chairman, Mr. Hanna, I
3 I think perhaps we are getting confused on something.

4 MNR has -- in terms of looking at
5 effects, basically in effectiveness, MNR has suggested
6 that the reporting occur in different ways, both
7 through those stakeholder committees and the provincial
8 steering committee structure that Mr. Gordon outlined,
9 and also specifically reporting on the results of the
10 provincial effects and effectiveness monitoring program
11 at the time of the sixth year review.

12 What we are talking about in the area --
13 as a result of the area inspection process that's
14 reported in that Table 4.12 is specifically the results
15 of compliance.

16 Mr. Hanna seems to refer to those as
17 effects and it's really not the intent there, that it
18 is strictly reporting on compliance and the result of
19 our area inspection program which is used to check or
20 assess that.

21 MR. HANNA: I am not going to belabour
22 this point, Mr. Chairman. I will simply say I wasn't
23 confused, I am quite clear of the difference between
24 the two and I was looking at effects that are not
25 captured within the effects and effectiveness

1 monitoring program as set out by the Ministry, and that
2 is what I was dealing with. And I do not believe the
3 types of effects I was talking about are being dealt
4 with in those programs.

5 THE CHAIRMAN: Can the panel advise the
6 Board whether or not there would be similar types of
7 reports in the other programs, like the wildlife
8 program and the fishery program in terms of annual
9 reports and state of the fisheries report, if I might
10 call it that, or something like that, so that
11 objectives in those other programs can be monitored?

12 Is there a similar type of setup with
13 respect to the other resource programs?

14 DR. MacLEAN: At present there is no
15 commitment to a report that parallels the state of the
16 forest report in fish and wildlife.

17 There is an effort to look at whether or
18 not such a report could be compiled, a state of the
19 fish and wildlife resource report. There is an effort
20 now within the Ministry to look at the feasibility of
21 doing that, but there is no commitment at this time to
22 producing the report you referred to, Mr. Chairman.

23 THE CHAIRMAN: And is there any type of
24 reporting, not necessarily an annual report, that looks
25 at the effectiveness of complying with objectives in

1 those other programs?

2 DR. MacLEAN: If I understand your
3 question, I think the answer is no.

4 MR. HANNA: Mr. Chairman, perhaps just
5 for clarification also. I was speaking in paragraph 14
6 to the specific annual and five-year reports dealing
7 with the timber management plan itself--

8 THE CHAIRMAN: No, I know you were.

9 MR. HANNA: --in addition to the
10 provincial level.

11 THE CHAIRMAN: But since the Ministry
12 manages other resources outside of the timber
13 management planning process, they have a fisheries
14 program, they have a wildlife program, and since
15 objectives in those programs are not dealt with per se
16 under the timber management process, then the Board
17 wanted to know whether there were other types of ways
18 of checking on those other resources through those
19 individual programs.

20 MR. HANNA: Yes. Yes, sir. The only
21 point I was making is even within -- accepting that
22 current structure, there still is this problem of even
23 within the units that they do manage, the defined areas
24 of land that they manage, whether we have reports at
25 that level in addition to the provincial level, and

1 that was the clarification I was interested in.

2 Q. Dr. MacLean, I would like to move now
3 to the matter of the level of protection associated
4 with the fish guidelines and how that can be assured
5 through the effectiveness monitoring program.

6 You indicated last Wednesday that the
7 guidelines were designed to be highly conservative in
8 the sense that no damage to the aquatic habitat would
9 occur; is that correct?

10 DR. MacLEAN: A. That's our expectation.
11 I think you have heard that from other panelists in
12 earlier panels.

13 Q. What confuses me is: We heard during
14 Panel 8 that the conclusion of the ESSA work was that
15 no conclusion could be reached in terms of -- the term
16 was used sufficiency or stringency. Now, given that
17 you couldn't be certain, how can we now be certain that
18 there will be no impact?

19 A. I don't think I expressed in any way
20 what I said in terms of certainty or in terms of risk.
21 All I can say is that in formulating the guidelines we
22 formulated them in such a way to be conservative so
23 that we would not expect, within some level of risk, to
24 see effects, that we would be mitigating, preventing
25 those effects.

1 There is a great deal, as we have said
2 before, of uncertainty about that prediction and that's
3 why we have designed the provincial program that we
4 have talked about, to take a look at how effective
5 those prescriptions really are in dealing with the
6 effects that we think are occurring.

7 Q. But as you recall in our discussion,
8 you used the fact of the uncertainty as a reason that
9 those predictions could not be made, and it was your
10 example I believe with respect to the recruitment
11 matter.

12 THE CHAIRMAN: Not that the predictions
13 could not be made, but that the predictions could not
14 be verified. Wouldn't that be the case?

15 MR. HANNA: Fine.

16 THE CHAIRMAN: You can make the
17 predictions, you put in a conservative measure and you
18 don't expect something to occur, but whether or not it
19 will occur is something that may be difficult to prove
20 because you haven't got the necessary database to do
21 so.

22 MR. HANNA: Thank you. I agree with
23 that, Mr. Chairman.

24 Q. I guess the point that I am asking
25 the witness is: Are you not faced with the same

1 problem whether you go guidelines or a predictive
2 model, the very point the Chairman has made?

3 DR. MacLEAN: A. I think in terms of
4 prediction the hypotheses we have stated are in terms
5 of being able to predict directions of change. I think
6 in terms of some of the discussions we have had, what
7 you would like, as I hear it, is us to be able to
8 predict absolute numbers of things and there are major
9 uncertainties in being able to do that.

10 All of our hypotheses are stated in
11 non-quantitative terms because of that, because of the
12 major uncertainties we have in being able to predict
13 absolute numbers as opposed to directions of change.

14 Q. Well, just to be clear. I'm not
15 asking for absolute numbers. The point that I'm
16 suggesting to you is that implicit in the guidelines is
17 the same uncertainty as you would have in a predictive
18 approach, there is no difference. Would you agree with
19 that?

20 A. In terms of predicting direction, I
21 would agree with you, yes.

22 Q. And we have heard throughout this
23 hearing the difficulty in dealing with the great
24 diversity of site-specific conditions that you are
25 faced with in timber management across the province?

1 A. Yes, I would agree with that.

2 Q. So the problem we are faced with with
3 imposing a guideline is trying to get a guideline
4 sufficiently comprehensive that it can deal with those
5 site-specific conditions in a basically fixed way? Do
6 you follow what I am --

7 A. Yes, I understand what you are trying
8 to get at.

9 Q. And so if the alternative to that
10 would be to look and say: I have a specific water
11 quality objective I want to achieve, I have a specific
12 fish population I want to achieve, I have got a lot of
13 uncertainty what I have to do to do that, but living
14 with that uncertainty and taking those conservative
15 assumptions and whatever other things a responsible
16 resource manager would do, here is what I think is
17 required on a site-specific basis as opposed to a fixed
18 guideline basis across the area of the undertaking. Is
19 that an alternative?

20 A. That is an alternative.

21 Q. And that alternative has no greater
22 hazards in terms of being wrong than the guidelines if
23 you use the same conservative assumptions?

24 A. I'm not sure what the difference
25 would be ultimately between the two approaches.

1 Q. In terms of protection of the
2 resource it is possible with that approach to obtain
3 the same level of protection of the resource base?

4 A. I mean, given what we know and what
5 we don't know, I think trying to apply in a practical
6 way the two approaches we would end up in the same
7 position. We do not understand the differences between
8 sites.

9 THE CHAIRMAN: Where are you going? What
10 is the point of all this?

11 MR. HANNA: Well, Mr. Chairman,
12 ultimately when we have an opportunity to present our
13 case one of the things that we will be coming forward
14 with is trying to convince the Board that rather than
15 using a strict guideline approach, using the
16 objective-based approach that the same level of
17 protection, in fact a better level of protection of the
18 resource base can be achieved much more efficiently.

19 And I guess the reason I am asking this
20 question of Dr. MacLean is to get his views as to
21 whether he sees a risk there that I don't know about in
22 taking that approach, and I think he has given me his
23 response to that and I feel comfortable with the
24 response he has given.

25 Q. Dr. MacLean, one other point here I

1 would like to deal with; and, that is, during our
2 discussion you made the comment that HSA, the habitat
3 supply analysis, could also be applied to aquatic
4 systems and I indicated I was encouraged by that
5 comment.

6 Can you explain to me how you would see
7 that approach being applied and how that might affect
8 the effectiveness monitoring program that you are
9 proposing?

10 DR. MacLEAN: A. I would not want to
11 talk about habitat supply analysis at this time. I
12 don't -- I think conceptually I would agree that it
13 could be applied. I am in no way an expert in habitat
14 supply analysis and wouldn't want to talk to the Board
15 or to the parties about it.

16 Q. So in terms of the effectiveness
17 monitoring program with respect to aquatic systems, you
18 could not answer whether or not -- or what impact it
19 might have on that monitoring program if an alternate
20 course of action to the guidelines was adopted?

21 THE CHAIRMAN: Well, they aren't using an
22 alternate course to the guidelines. They have spent
23 several years developing the guidelines. I would be
24 surprised if they knew what the results were of
25 applying another program which they don't use.

1 MR. HANNA: No, that wasn't my point, Mr.
2 Chairman, it is more the way that the effectiveness
3 monitoring program has been designed, it has been
4 designed on a conceptual basis of guidelines and I am
5 looking and saying: Take a different premise.

6 THE CHAIRMAN: But they haven't done
7 that.

8 MR. HANNA: Well, I appreciate they
9 haven't done it, Mr. Chairman. I am asking this
10 witness as to what his view would be as to what the
11 implications of that would be in terms of the structure
12 of that program, the experimental design, if you will,
13 of that program.

14 DR. MacLEAN: My sense, and I think what
15 I said on Wednesday was that there are a number of
16 major uncertainties that we identified in trying to
17 construct a model that linked aquatic habitat to
18 numbers of fish.

19 My understanding of habitat supply
20 analysis is that one of the components of such an
21 approach would be a similar model, a model that linked
22 habitat to numbers of fish. I think in trying to apply
23 habitat supply analysis one would identify the same
24 uncertainties.

25 Given that the program is designed to

1 address those uncertainties, I would think that -- and
2 those are the major -- the group, the ESSA exercise
3 felt were the major uncertainties relative to things
4 like site variation and so on. I don't anticipate that
5 there would be major changes in the research program
6 that's proposed in Panel 16 to address habitat supply
7 analysis as an alternate approach because I think it is
8 dealing inherently with the same linkages, the same set
9 of processes.

10 MR. HANNA: Q. I concur with you with
11 one exception, and that would be: Is it not the case
12 that by establishing the reserve distances - I am
13 speaking now about the shoreline reserves and the rules
14 that are set up, the 30, 60, 90 rules - that you are
15 imposing a structure there that may not be necessary;
16 in other words, if you took a totally flexible
17 approach?

18 DR. MacLEAN: A. I think the experiment
19 is designed to look at a variation in reserves that
20 runs from zero to two times the current proposal to
21 address concerns about water quality, fisheries and
22 other biota.

23 I don't think we would -- you know, given
24 our uncertainties about the effect of reserves on many
25 of the parameters we are trying to measure, I doubt

1 that it would change.

2 Q. Fine.

3 A. I think it gets back to the same set
4 of linkages and how much variation there is from a
5 reserve approach.

6 Q. I would like to move to another topic
7 now and that deals with the matter of the relative
8 allocation of funds among the three studies in the
9 effectiveness monitoring program.

10 Now, I believe the Board has been given
11 evidence that there is in the order of \$46.7-million as
12 the projected budget for the effectiveness monitoring
13 program; in that order, it's in the \$50-million range?

14 A. That is the proposed total budget for
15 the effectiveness program for the three values. Now,
16 you will appreciate from Mr. Gordon's evidence that our
17 approach to doing that has expanded, that we are
18 looking at monitoring other values and so that very,
19 very tentative prediction of \$46-million has changed.

20 Q. Okay. Let's just deal with the three
21 values in the order -- I am not trying here to fix you
22 down to 46.7 or whatever, just an order of magnitude.

23 And we have, as I understand it, the
24 allocation on the three values notwithstanding these
25 other studies that are taking place, approximately

1 \$8-million for wildlife, 33 for fisheries and 3.6 for
2 tourism. We can live with those numbers, that's a
3 reasonable...

4 A. That's a very rough...

5 Q. Yeah.

6 A. I believe there are detailed figures
7 in one of the interrogatories before the Board.

8 Q. Yes, that's right. Now, where I am
9 coming from in this is I am looking at how one might go
10 about allocating that money among those three values,
11 and a consideration that came to my mind was the scale
12 of impact that might be expected. If you had a large
13 scale impact you would expect to invest more money in
14 that, all other things being equal; would you agree
15 with that?

16 THE CHAIRMAN: Well, couldn't there be
17 any number of variables such as large scale uncertainty
18 in a certain area?

19 MR. HANNA: Mr. Chairman, I am planning
20 on going through each one of the variables and that was
21 my -- that's where I am leading very much in these
22 questions.

23 MRS. KOVEN: Mr. Hanna, could you refer
24 us to the exhibit with the budget information, or
25 someone on the panel?

1 DR. OSBORN: 936.

2 MR. HANNA: It is 936, Mrs. Koven. It
3 is actually on page 3.

4 DR. MacLEAN: It's question 34 from the
5 OFAH.

6 MR. HANNA: I'm sorry, Mrs. Koven.

7 MRS. KOVEN: One other thing, Mr. Hanna.
8 Could you repeat for me the breakdown for wildlife,
9 tourism and fisheries that you gave just a moment ago?

10 MR. HANNA: I had 8-million for wildlife,
11 33-million for fisheries - I think the exact number is
12 32.9 but I just said 33 - and I think I said three and
13 a half or 3.6-million for tourism.

14 MS. MURPHY: Just for your records then,
15 the interrogatory that my friend is referring to is
16 found in Exhibit 924. It is an interrogatory from OFAH
17 and it is their Question No. 34.

18 And I would suggest that you bear in mind
19 that the figures that are being given here are over
20 time and the figures that were being discussed in the
21 other exhibit were annual, so that we aren't confused.

22 THE CHAIRMAN: Go ahead.

23 MR. HANNA: Q. Now, my purpose in this,
24 Dr. MacLean, is not to quibble about the decimal
25 points, and I just simply get relative order of

1 magnitudes in terms of the allocations and to go
2 through criteria that we might use in deciding on those
3 allocations.

4 The first criteria that I suggested was
5 the scale of impact, all other things being equal, and
6 that you would expect where you have the greatest
7 impact to allocate the greatest amount of money,
8 all other things being equal?

9 DR. MacLEAN: A. That's one criteria,
10 yes, I would agree.

11 Q. Another that you might use would be
12 what I will call social significance; in other words,
13 you might -- you would tend to invest, for example --
14 and moose is a common one that's been heard here
15 because of the importance to native groups and local
16 residents, you tend to invest perhaps more money in
17 that than you would maybe field mice?

18 A. In general I would agree, yes.

19 Q. All other things being equal.

20 Another consideration the Chairman raised would be the
21 matter of uncertainty. If you had a relationship that
22 was highly uncertain as opposed to one which you had a
23 higher level of certainty associated with and you felt
24 that you could deal with that uncertainty, you could
25 reduce that uncertainty significantly, again all other

1 things being equal, you would tend to invest more in
2 the uncertain relationship?

3 A. Yes, I would agree.

4 Q. Now, are there other criteria that I
5 should be aware of in terms of coming to an allocation
6 of resources?

7 A. I guess for me the other major one
8 would be cost of collecting the data and there are
9 differences in terms of what it costs you to collect
10 data on moose and on field mice. And so apparent
11 differences may reflect the cost of actually getting a
12 data point in part.

13 Q. Okay. I would like to go through
14 these, and I will add that as a fourth criteria --

15 MS. MURPHY: Well, just in fairness, may
16 I just suggest that it is kind of unfair to ask the
17 witness to make an exhaustive list on the stand. He
18 has added one. May I just point out that it may well
19 be once he has had time to think about it he may want
20 to add others.

21 MR. HANNA: I am perfectly willing to
22 accept that.

23 Q. I would like to take these four and
24 others that you might add in and I would like to look
25 at the allocation of funds and see how that matches

1 against those criteria.

2 Now, looking at the scale of impact of --
3 and looking here, first of all, I am going to compare
4 fisheries and wildlife. I would like to get your view
5 as to the scale of potential impacts that you envisage
6 in terms of fisheries relative to those of terrestrial
7 wildlife.

8 DR. MacLEAN: A. I think it is important
9 to realize in part that we are not simply dealing with
10 fisheries values in the aquatic program. A fair amount
11 of the cost of the aquatic effects program is
12 collecting data on water quality and other biota, so we
13 are not simply comparing fisheries to wildlife values.

14 Q. And what are these other biota that
15 you refer to?

16 A. Invertebrates.

17 Q. Mosquitos like?

18 A. Things that fish eat and that live in
19 the aquatic environment, yes, not simply mosquitos.

20 Q. Is that what you mean by other biota,
21 those biota that support fisheries?

22 A. I think other biota in general. I
23 think there is --

24 Q. All right. Well, let's accept that.

25 Now, I'm looking at your aquatic, which is now

1 fisheries and water quality and your other biota, and I
2 am comparing that to terrestrial wildlife in which I
3 would submit to you, because of the featured species
4 approach, is not just moose, but is 210 different
5 species in the terrestrial environment.

6 MS. MURPHY: My friend has asked to have
7 a look at the values that were here for moose. So
8 whether there are others, as Dr. MacLean said at the
9 beginning, there is other money for others.

10 MR. HANNA: Well, Mr. Chairman, I
11 understand my friend's point. I think it is really
12 just obscuring what I am trying to get at.

13 I think the point is quite clear that the
14 reason we have moose guidelines, we have heard evidence
15 throughout this hearing about the featured species
16 approach, that the Moose Habitat Guidelines are
17 designed not to deal with habitat solely for moose but
18 to deal with habitat for featured species which are
19 supposedly to account for 70 per cent of the species in
20 the boreal forest.

21 I would submit to you, therefore, that
22 the reason we are going through this exercise is not
23 simply for moose, but to deal with those species that
24 are associated with moose also and that's the point of
25 my question.

1 DR. EULER: But you have to understand
2 though that in Interrogatory No. 24 that's moose, okay,
3 and there is other money available for other wildlife,
4 so we should really put that all on the table.

5 MR. HANNA: Q. My understanding, Dr.
6 Euler, and perhaps -- is that as other studies are to
7 deal with those -- well, part of it is to deal with
8 ensuring that the featured species assumption dealing
9 with those 70 per cent of the species is in fact valid?

10 DR. EULER: A. Yes.

11 Q. But it is also to deal - in fact as
12 far as I can see - much of the money is allocated to
13 those 30 per cent of the species that are not captured
14 by the featured species approach?

15 A. Right.

16 THE CHAIRMAN: But it is all money spent
17 on wildlife; is it not?

18 MR. HANNA: Q. Dr. Euler, perhaps then I
19 will ask you how much of that \$8-million being bumped
20 up to account for all of the wildlife studies that are
21 envisaged over that period of time?

22 DR. EULER: A. Well, see, you need the
23 information about how much money we are spending on
24 other wildlife because it's approximately equal to
25 that.

1 Q. I accept that. It is approximately
2 equal to...?

3 A. To the number that's listed for moose
4 there.

5 Q. So we can make it 16-million?

6 A. Approximately, yes.

7 Q. Well, in approximate terms.

8 A. Yes, mm-hmm.

9 MR. MARTEL: Mr. Hanna, are you trying to
10 get at that there is not enough money being spent on
11 wildlife as opposed to the amount spent on fisheries,
12 or are you just saying there is not enough money spent
13 period?

14 MR. HANNA: No, I am concerned
15 particularly about the allocation, Mr. Martel, that the
16 allocation with respect, and my client's view is --
17 obviously my client is very concerned about fisheries
18 and I don't think there is any doubt about that, and I
19 don't want that to be in any way misunderstood.

20 THE CHAIRMAN: You are not concerned
21 about the money spent on tourism as being too low?

22 MR. HANNA: No, sir, I am not going to --
23 in fact, we are concerned about the fact that the
24 amount of money that is spent on tourism. We are
25 concerned about the allocation of this money, the total

1 budget with respect to the three elements.

2 MR. MARTEL: I am having difficulty
3 understanding where you are going. Are you saying
4 there isn't enough money being spent?

5 MR. HANNA: Well, we will always say
6 that, Mr. Martel.

7 MR. MARTEL: Right.

8 MR. HANNA: I think my client would be
9 happy to see three times the amount of money that has
10 been allocated, I don't think there is any question
11 about that. But I am looking within the money that we
12 currently have on the table, the relative allocation
13 among the three values.

14 MRS. KOVEN: And you are talking about
15 the new funding, Mr. Hanna, you are talking only about
16 the new funding?

17 MR. HANNA: I am sorry, Ms. Koven, I
18 don't understand the other funding.

19 MRS. KOVEN: Well, Dr. Euler just
20 referred to \$8-million that is currently being spent on
21 other wildlife other than moose.

22 MR. HANNA: Yes.

23 MRS. KOVEN: But you are not interested
24 in that, you are only looking at the new funding --

25 MR. HANNA: No, I am willing to put

1 that -- to say now we have in addition to the 46,
2 52-million or whatever - or my math - 54-million, is
3 now what we are talking about, the total budget in
4 terms of --

5 THE CHAIRMAN: Well then, is there other
6 money spent on fisheries that does not appear in the
7 33?

8 DR. EULER: See, we should have --

9 THE CHAIRMAN: Is there other money spent
10 on tourism that doesn't appear in the 3.6?

11 DR. EULER: This interrogatory question
12 has part of the picture, but we led evidence that gave
13 the total picture and really that's what we should be
14 working from here, is the evidence that Mr. Gordon led
15 on how that money is allocated in the whole process.

16 MR. HANNA: Q. Well, I am happy to get
17 the correct numbers. I have been given here numbers
18 that have now been revised to 16-million for wildlife,
19 33-million for fisheries and 3 -- \$3.5-million for
20 tourism.

21 If you would like to tell me what the
22 appropriate numbers are that I should use there and
23 what the total pie is, I am happy to have it now. So,
24 Mr. Gordon, what it is?

25 MR. GORDON: A. If I am not clear, maybe

1 we should go even slower. First of all, you sent us in
2 a question, Question No. 34, and you asked us relative
3 to the \$46.5-million, which was related to three
4 specific projects, what the breakdown was of those
5 dollars. We provided our best estimate of that in the
6 answer; okay?

7 Those numbers are related to the numbers
8 I submitted in Exhibit No. 936; however, I would
9 suggest that to get the overall picture, and it is also
10 simpler to look at these numbers, I would suggest to
11 you, if you could, is forget about the answer to
12 Question 34 for the moment and look at page 3 of
13 Exhibit 936 where we have estimated on an annual basis
14 when we got the full -- the studies up at their full
15 level running what the dollars will be that were
16 required on an annual basis to deliver those projects.

17 And if you look there at the first four
18 lines: 1.2, 1.2, 1.3 and 1.4, under the provincial
19 effects/effectiveness, we have got \$1.4-million
20 annually for moose; an equivalent number of dollars for
21 other wildlife; 1.1 the MNR component for the aquatics,
22 the fisheries; and 400,000 for tourism.

23 And I would suggest to you perhaps the
24 simplest way of trying to do your comparison may be to
25 look at those numbers.

1 Q. Well, maybe what I am confused then
2 by is I don't see how to go from those numbers to the
3 answer in Question 34. Perhaps you could just explain
4 that to me?

5 A. First of all, let's pick the easiest
6 one first. If you look at the answer on the table that
7 was attached to the answer to Question No. 34, if you
8 look at the tourism effects column, the number of
9 dollars for the -- it would be approximately a ten-year
10 study.

11 Q. Unfortunately I don't have that
12 question. Perhaps you can just read it to me and I
13 will just...

14 A. Okay. What we have done is we have
15 tried to make things -- not hide anything, we have
16 tried to make things simple in table -- in Exhibit 936.
17 So if you look at -- he has got it, okay.

18 Q. Yes.

19 A. Tourism effects, you will see there
20 is a column with ten numbers starting at 261,000,
21 ending with 311,000, and you look at -- the majority of
22 those numbers are in the range of \$400,000. That's
23 where the \$400,000 comes from for line 4 on page 3 of
24 Exhibit 936.

25 If we go over to aquatic effects column,

1 in the Interrogatory No. 934, you will see numbers up
2 in the range of \$2.7-million. What we have identified
3 on page 3 is the MNR component of those dollars and out
4 of that 2.7, 2.6, approximately 1.1 of that per
5 annually relates to doing measurements relative to
6 fisheries, and what is not included there is the water
7 quality and other biota component.

8 And if you do the same thing for moose,
9 once the project is up and running, in general terms,
10 you can see it ranges from 1.6 to 1.2 and it starts to
11 drop down near the end of the project. We are saying
12 on average you are looking at about \$1.4-million per
13 year while the project is ongoing and that's the number
14 you see in Exhibit 936.

15 And then besides the numbers that we've
16 shown in Interrogatory No. 34 we have also identified
17 another \$1.4-million for other wildlife. So I guess
18 it's up to you now as to which way you want to look at
19 the numbers and do your comparisons.

20 MR. HANNA: Mr. Chairman, it's been
21 suggested to me it might be wise to postpone this task,
22 the costs it takes until I've had the time to digest
23 this relevant to the questions I was going to ask.
24 This has changed somewhat my interpretation of the
25 numbers and maybe it would wise in those circumstances

1 to do that.

2 Q. I would like to deal with the tourism
3 component of it - I don't believe those numbers have
4 changed - and I believe, Mr. Straight, perhaps you are
5 the one to ask this question to.

6 The concern of my client is that the
7 tourism studies as they stand at the present time is
8 limited solely to basically the economic impact of
9 timber management on tourist lodges as opposed to the
10 socio-economic impacts on a broader scale in terms of
11 resource users which supposedly the tourism guidelines
12 were designed to deal with; is that correct?

13 MR. STRAIGHT: A. The tourism guidelines
14 are designed specifically to deal with tourism values
15 or other sets of values for which they may similarly be
16 applied, okay.

17 And quite rightly, yes, the effects and
18 effectiveness monitoring program is designed to test
19 the effectiveness of those particular guidelines. They
20 would not include all of the concerns of your clients,
21 that's correct.

22 Q. And Mr. Clark gave evidence and
23 others in dealing with the socio-economic impacts
24 associated with timber management have suggested that
25 the tourism guidelines are one of the ways that a

1 number of other users' concerns would be addressed?

2 A. There are cases where other users'
3 concerns could be addressed using those guidelines,
4 yes.

5 Q. But the effectiveness monitoring
6 program will provide no information as to whether or
7 not that actually is the case?

8 A. The effectiveness monitoring program
9 will deal with the protection of those. How well we
10 protect those particular values in terms of aesthetics,
11 for example, if that tends to be an issue, using the
12 tourist basically in this case which can include both
13 your clients as well as people from out of province, it
14 would provide information on whether or not we were
15 meeting those aesthetic objectives.

16 Q. But it is limited to those using
17 tourist-based facilities?

18 A. Those are tourism guidelines, that's
19 correct.

20 Q. But there is no way to know whether
21 they are effective for those people not using
22 tourist-based lodges without having spoken to those
23 people per se, other than by inference saying that if
24 the tourist users -- tourist lodge users are satisfied,
25 therefore, everyone else will be satisfied?

1 A. Are you referring to -- well, I'm
2 just trying to -- basically you are correct. Basically
3 we are going to be dealing with the clients of tourist
4 operations in this particular study.

5 To the degree that those operations are
6 more than lodges, they include boat caches, they
7 include outpost campsites as well as remote,
8 semi-remote and accessible lodge facilities and, to the
9 degree to which their tourist clientele may come from a
10 number of different sources, that will limit the type
11 of personnel or clients that we would look at, that's
12 correct.

13 Q. Now, I would like to look at Exhibit
14 961 which was the scoping meeting minutes that were
15 introduced at the end of last Wednesday and I would
16 like to look specifically at page 6.

17 A. Yes.

18 Q. Now, there is the description of what
19 the tourism submodel will deal with; correct?

20 A. General description, that's correct.

21 MR. HANNA: Mr. Chairman, perhaps for the
22 benefit of the audience and others I could perhaps just
23 read that section, it may be more expeditious.

24 THE CHAIRMAN: Go ahead.

25 MR. HANNA: Q. The section says, under

1 submodels on page 6 of Exhibit 961:

2 "Tourism: Will compute changes in
3 tourism use and angler and hunter effort
4 as a function of changes in the forest
5 structure, timber management actions and
6 previous hunting and angling success.
7 This submodel will have to consider
8 resource uses other than tourism to make
9 a complete picture of processes such as
10 angling and hunting effort because not
11 only tourists use fish and moose
12 resources."

13 Now, it seems to me that the conclusion
14 reached here is not reflected in the study design; is
15 that correct?

16 MR. STRAIGHT: A. No, I don't believe
17 that's correct. The study design will and does
18 incorporate how both tourism -- will measure both
19 tourism -- primarily through tourism use what changes
20 in angler effort, changes in resource base are
21 occurring on a particular fishery.

22 But, you are right, the program is
23 specifically designed to look at changes in tourism
24 use, effectiveness of the tourism guidelines in
25 protecting tourism values. We have never made any

1 bones about it, that is the specific direction and
2 intent of that program.

3 Q. And other socio-economic impacts that
4 supposedly are mitigated by the tourism guidelines will
5 not be measured?

6 A. No, the tourism guidelines are there
7 to mitigate or minimize or prevent socio-economic
8 impacts to that tourism value, that's their purpose.
9 They are not there -- we are not looking at a set of
10 guidelines designed for average angler and hunter that
11 we are talking about here, these are specifically
12 tourism guidelines.

13 My sense is that I would come at your
14 concerns for socio-economic values from -- on the local
15 angler, for example, in a totally different way.

16 Q. And what is that?

17 A. Well, depending on what your specific
18 question is, it's not addressed in the tourism
19 guidelines. That is the only point. I'm trying to
20 make that point very clear and obvious.

21 Q. And what process either through
22 compliance monitoring, auditing, area inspection
23 process, effects monitoring, effectiveness monitoring
24 or whatever other program the Ministry has going will
25 you be able to detect and determine what the actual

1 effects are -- socio-economic effects are on groups
2 other than tourism? I presume here we are talking
3 commercial tourism?

4 A. And for what purpose am I doing this?

5 Q. For the purpose of determining
6 whether your expectations in terms of mitigating those
7 impacts are in fact realized?

8 A. Mitigating what impacts. I mean, the
9 process --

10 Q. The socio-economic impacts on those
11 other user groups.

12 A. But the process we are talking about
13 here relative is a timber management planning process
14 and a concept whereby we protect other values that have
15 been identified, okay. So we are identifying a tourism
16 value, we are developing some guidelines to provide
17 staff with information as to how they can prevent or
18 minimize an impact -- an adverse effect from occurring,
19 and we are going to test those values.

20 We don't have similar guidelines in that
21 context for the local resident angler. As a district
22 manager I would look at providing benefits to local
23 anglers in totally different concept, I would look at
24 angling benefits through my fisheries management plans.

25 If local anglers did come to me with a

1 specific concern in a timber management plan and
2 identify a value, we treat that through the area of
3 concern planning process. But we haven't identified
4 those as -- generally we have looked at timber
5 management planning as being positive in terms of
6 providing access to anglers. We generally have not
7 looked at that as creating a potentially negative
8 effect that we need a set of guidelines to minimize the
9 impact of.

10 Q. I'm certainly aware of how you look
11 at things, Mr. Straight. What I'm asking here and what
12 I understand the whole purpose of this panel's evidence
13 is, is to confirm the way the Ministry looks at the
14 world as to the way the world operates.

15 And I'm asking you: Are you going in any
16 of your programs - and I think you have answered it -
17 that: No, you are not going to go out and see if in
18 fact these assumptions that you are making in terms of
19 benefits and whatever will actually be realized?

20 MS. MURPHY: In fairness what the witness
21 said was he can't respond to how one particular thing
22 is going to be looked at without a specific question.

23 MR. HANNA: Q. One last question, Mr.
24 Straight. Are not the concerns in terms of fisheries
25 and moose and whatever that the tourist operator would

1 have concern over, equally be dealt with in fisheries
2 management plan, wildlife management plan, or whatever
3 these other mechanisms are that you are referring to?

4 MR. STRAIGHT: A. There are -- not
5 totally. There certainly are concerns of tourist
6 operators that are dealt with in all our planning
7 processes and I think, as we have tried to explain, we
8 do -- in the resource management planning that the
9 Ministry does, we do provide those interlinking,
10 integrating kinds of mechanisms.

11 Certainly we would consider tourism
12 values in fisheries plans as well.

13 Q. I just have a short topic here for
14 Dr. Euler and it deals with the matter of featured
15 species versus indicator species. A favorite topic of
16 yours, Dr. Euler.

17 DR. EULER: A. I love it.

18 Q. And I believe you have been quite
19 articulate about your concerns with the indicator
20 species approach and whatever, I don't have any
21 intention of going into that at this time.

22 The only point that I raise it at this
23 time is that in the discussion we had during Panel 10 I
24 believe we talked about the possibility - I believe it
25 has been talked about in this panel also - of adding

1 other featured species to deal with those 30 per cent
2 that are not captured by the current featured species,
3 and I'm wondering if there had been any progress made
4 in this respect and how that is incorporated in fact
5 into the effects monitoring program?

6 A. Well, I see that as being a very
7 important topic of the workshop that we are planning to
8 hold early in 1990 just three or four months from now
9 in which we address that question very specifically and
10 very thoroughly. So I guess -- does that answer your
11 question about progress towards that?

12 Q. We talked about, for example, great
13 gray owls. You probably remember the discussion we had
14 there?

15 A. Yes.

16 Q. Should I be led to believe then that
17 this workshop will determine what are potential
18 candidates then--

19 A. Yes.

20 Q. --for these to deal with that 30 per
21 cent?

22 A. Yes. Yes, indeed, we are going to
23 bring in expertise so we look at that really
24 thoroughly.

25 Q. And once that workshop comes to

1 conclusion and says the great gray owl isn't as good as
2 the boreal owl or whatever--

3 A. Yes.

4 Q. --that will there then be an
5 effectiveness monitoring program for that featured
6 species in a comparable way?

7 A. Very possibly. I can't tell you
8 exactly at this time because obviously I don't want to
9 prejudice the workshop, but that is a very possible
10 outcome, yes.

11 Q. So for that particular issue we will
12 have to wait until after the workshop?

13 A. Oh yes. For details, yes, indeed.

14 MR. HANNA: I said it was going to be a
15 short topic, Mr. Chairman.

16 MR. MARTEL: Can I ask a question. It's
17 a pretty foregone conclusion though that regardless of
18 which ones you selected you would in fact - and I don't
19 want to mention any specific types - that in fact you
20 would have guidelines for that group as well then?

21 DR. EULER: Well, very probably, yes.
22 Yes, I would think so. See, it's hard to say
23 definitively without any question of a doubt, but that
24 would be my best estimate at this time.

25 MR. HANNA: Q. Dr. Euler, is it a

1 possibility there also might be a habitat supply
2 analysis for that species?

3 DR. EULER: A. Yes, indeed, that is a
4 possibility. If we look at habitat supply analysis and
5 decide to use it as an operational tool, certainly.

6 Q. Mr. Straight, I would like to take
7 you back to Panel 8 if we can for a moment, and I
8 believe there was quite a discussion in Panel 8 about
9 this panel and a couple of points I would like to
10 follow up on there and it has to deal with the habitat
11 supply analysis approach.

12 In Panel 8 you indicated that before you
13 would buy into a new technology, and habitat supply
14 analysis was being put forward at that time as that
15 type of thing --

16 MR. HANNA: Yes, I can give you a
17 reference, Ms. Murphy, it's Volume 70, page 11908
18 starting at line 21 going over to page 11909, line 9.

19 Q. And you indicated at that time that
20 before you bought a new car, I think was the analogy
21 that you used, you would want to test drive it first.
22 Do you recall that?

23 MR. STRAIGHT: A. I do believe I recall
24 that, yes. I didn't mention the name of the car; did
25 I?

1 Q. No, you didn't. And I believe you
2 suggested that you had not yet had an opportunity to
3 test drive this car, the HSA car?

4 MS. MURPHY: Can he just have a look at
5 it. I'm uncomfortable with having his words
6 interpreted without giving him a chance to look at it.
7 (Handed)

8 MR. STRAIGHT: Thanks. Yes, I think I
9 read that section, Mr. Hanna.

10 MR. HANNA: Q. Okay. Well, the first
11 question is a bit of a trueism, but there has always
12 got to be somebody to try the first car; right?

13 MR. STRAIGHT: A. Yes, that's true.

14 MS. MURPHY: Not on the highway, I hope.

15 MR. HANNA: Q. Now, was an opportunity
16 provided to you at any point in the past to test drive
17 the HSA car?

18 MR. STRAIGHT: A. An opportunity
19 provided to me or to the Ministry. I don't really --

20 Q. You as a representative of the
21 Ministry?

22 A. Well, I'm aware generally of some
23 efforts being made at trying that now, looking at it.
24 Dr. Euler referred to his objective to assess the
25 feasibility of that. I don't personally get involved

1 in doing much of that kind of work any more, but - so I
2 personally haven't had an opportunity to test drive it.

3 Q. Were you given an opportunity?

4 THE CHAIRMAN: What do you mean, given?

5 MR. STRAIGHT: Given.

6 THE CHAIRMAN: Who is giving who what?

7 MR. HANNA: Q. Were you approached
8 several years ago before this hearing began by Wildlife
9 Habitat Canada to test the habitat supply analysis
10 approach?

11 MR. STRAIGHT: A. Oh, I don't recall
12 anything of that nature personally. Maybe somebody
13 else can help.

14 Q. No, I'm speaking of you.

15 A. I don't recall that anyway. Not in
16 those specific terms, I don't remember anything.

17 Q. Well, were you approached by Wildlife
18 Habitat Canada several years ago to undertake a new
19 approach to integrating wildlife in timber management
20 plans?

21 A. Not that I can recall in those words.

22 Q. Were you approached by Wildlife
23 Habitat Canada several years ago?

24 A. I don't personally recall being
25 approached by them, no.

1 Q. Fine.

2 MRS. KOVEN: Mr. Hanna, who is Wildlife
3 Habitat Canada?

4 MR. HANNA: Well, I will try to do my
5 best here and not improperly represent them.

6 Wildlife Habitat Canada, my
7 understanding, is an agency setup that is a cooperative
8 venture between various organizations, something along
9 the lines of the Nature Conservancy in a sense, in
10 dealing with wildlife habitat particularly.

11 The money to support it comes from the
12 wildlife habitat stamps that are published on an annual
13 basis, all waterfall hunters must purchase them and
14 members of the public are also encouraged to purchase
15 them. The revenues from those stamps go to Wildlife
16 Habitat Canada.

17 Wildlife Habitat Canada then, through its
18 only particular resources and through leveraging those
19 resources, attempts to encourage programs that will
20 advance the management and conservation of wildlife
21 habitat in Canada.

22 It is my understanding they work through
23 government, non-government organizations, a whole
24 variety of different organizations to try and advance
25 their objectives in terms of promoting the conservation

1 of wildlife habitat.

2 Q. Dr. Euler, is that a fair
3 representation? I think you are familiar with Wildlife
4 Habitat Canada?

5 DR. EULER: A. I think so, yes.

6 THE CHAIRMAN: We should break at some
7 point, Mr. Hanna, for the morning break. Is this a
8 good place?

9 MR. HANNA: I will just ask Mr. Straight
10 one last question and then I think it would be an
11 appropriate time, Mr. Chairman.

12 Q. Perhaps it would be Dr. Euler. I
13 will leave it to you two gentlemen to decide who should
14 answer it.

15 But in Exhibit 923 which is the update on
16 the effects monitoring program it's indicated that the
17 Ministry is in the process of evaluating the habitat
18 supply analysis approach. I don't think it's necessary
19 to refer to it, I'm speaking in very general terms.

20 What circumstances are you aware of in
21 Ontario to suggest that HSA would not be practically
22 implementable here as opposed to other jurisdictions
23 that are using it like New Brunswick, B.C., and the
24 U.S.?

25 DR. EULER: A. The problem, as I see it,

1 is essentially a cost problem. That strikes me as the
2 biggest impediment.

3 Q. Ontario is poorer than New Brunswick?

4 A. I didn't say Ontario is poorer than
5 New Brunswick.

6 Q. But my question was: What
7 circumstances are there in Ontario that are not present
8 in New Brunswick, B.C., U.S?

9 I understand you are concerned about
10 costs, I think you expressed that concern to the Board.
11 I'm trying to understand why that is an impediment in
12 Ontario and not in other places?

13 MS. MURPHY: Well, I don't know that my
14 friend has established that it's not an impediment in
15 other places or what the difficulties are, and I expect
16 supposedly he'll be doing that in his case.

17 MR. HANNA: Certainly is my intent, Mr.
18 Chairman.

19 DR. EULER: Well, okay. To try to answer
20 that, first of all, my understanding of HSA is that you
21 need to have a geographical base referencing system to
22 make it operational in Ontario. I don't see that
23 available to us.

24 To the best of my knowledge it just isn't
25 there and it has to be developed. So, for example, our

1 maps, our FRI maps or our topo maps or some kind of map
2 has to be digitized into a computer that is readily
3 accessible to the manager.

4 The other thing is a great deal of
5 knowledge has to be learned about how habitat and wild
6 animals interact, and I think we have major gaps in our
7 knowledge there to -- that means we can't just simply
8 adopt HSA, we are going to have look at it in a very
9 measured and thoughtful way and as these impediments
10 are knocked down one by one, then we can consider how
11 best to use it.

12 MR. HANNA: Perhaps I will leave it
13 there, Mr. Chairman. This might be an appropriate time
14 for a break.

15 THE CHAIRMAN: Okay. We will take 20
16 minutes.

17 Thank you.

18 ---Recess taken at 10:00 a.m.

19 ---On resuming at 10:30 a.m.

20 THE CHAIRMAN: Thank you. Be seated.

21 MR. STRAIGHT: Mr. Hanna, Mr. Chairman,
22 just before we proceed. I had done some thinking after
23 you asked me that question, Mr. Hanna, about
24 involvement with Wildlife Habitat Canada and the
25 only -- and, as I indicated, when you asked me the

1 question I could recall no sort of official or formal
2 request from Habitat Canada to be involved in habitat
3 supply analysis.

4 What I do recall is some discussions with
5 Mr. Dan Welsh -- or Dr. Dan Welsh in the Canadian
6 Wildlife Service and Dave Neeve who I believe is the
7 Executive Director or in some similar type of position
8 for Habitat Canada, had a moose in boreal forest
9 workshop in Thunder Bay where we basically discussed
10 the kind of work that Wildlife Habitat Canada was
11 involved in. And I specifically asked if Mr. Neeve
12 would forward me some information on the kind of work
13 they were involved and the kinds of activities they
14 were doing. And I did receive some correspondence --
15 some material from Mr. Neeve on that, but that was
16 basically my understanding of the substance of those
17 discussions.

18 MR. HANNA: Q. When did these
19 discussions take place?

20 MR. STRAIGHT: A. Well, I can't recall
21 the specific date for that boreal forest workshop. It
22 would have been two to three years ago or within--

23 Q. I can get the date for that.

24 A. --1987 I believe. And I interpreted
25 that similar to discussions that I had had with

1 different specialists at that time. Also during the
2 ESSA workshops you will recall there was a Dr. Ian
3 Mettam from New Brunswick who was part of those
4 workshops, and I can recall having some very fruitful
5 and interesting discussions with him in terms of the
6 kind of habitat work they were doing relative to forest
7 interaction down in New Brunswick. If that is of any
8 help.

9 Yes, that was the forestry and wildlife
10 management in the boreal forest, an Ontario workshop
11 and it was held in Thunder Bay between December 7th to
12 9th, 1987.

13 Q. And so that your understanding of
14 that exchange was that there was no specific proposal
15 put forward to you?

16 A. Well, I can recall us discussing -
17 and, again, it's recollection - I mean, I was very
18 interested in what kind of techniques, new initiatives
19 were available in that general field and I can recall
20 us discussing that.

21 And I can recall just generally
22 discussing how Ontario might have access to funds that
23 they might have, the kind of work that they were doing,
24 the kind of general information that I could relay on
25 to, in that particular instance, it would have been Don

1 Simkin in Wildlife Branch, that particular sort of
2 thing.

3 Q. And did you relay it on to Mr.
4 Simkin?

5 A. I know I have discussions with Mr.
6 Simkin, but to be honest with you, I can't recall the
7 specifics. I just basically interpret it as an
8 opportunity to have some very valuable discussions with
9 specialists in those kind of areas while attending
10 those workshops -- that workshop proceedings.

11 Q. And you did not follow up on it
12 beyond that?

13 THE CHAIRMAN: Well, hold on, hold on a
14 second, Mr. Hanna. Where is all this leading? Is it
15 really all that relevant?

16 MR. HANNA: Well, I think it's relevant
17 in the sense, Mr. Chairman, that I am expecting to
18 bring before this Board the fact that the Ministry did
19 have the opportunity to undertake the type of work they
20 are now proposing to do with respect to habitat supply
21 analysis and, at that time, the Ministry did not take
22 up that opportunity; and, therefore, that I think has
23 some bearing on the amount of latitude that the
24 Ministry should have in terms of its implementation of
25 this approach.

1 THE CHAIRMAN: Well, Ms. Murphy, I don't
2 think it's worth standing up.

3 Mr. Straight, essentially, are you
4 prepared to admit that the matter -- what discussions
5 took place in 1987 at this workshop concerning supply
6 habitat analysis, the Ministry did not follow through
7 and undertake it at that time or subsequently to this
8 time?

9 MR. STRAIGHT: I am sorry, sir, I think I
10 missed a key word in there.

11 THE CHAIRMAN: Well, are you prepared to
12 indicate to the Board and admit that regardless of what
13 discussions took place the Ministry has not undertaken
14 habitat supply analysis as a result of those
15 conversations or discussions?

16 MR. STRAIGHT: Certainly not as the
17 process we are putting before the Board, that's
18 correct.

19 THE CHAIRMAN: Okay.

20 MR. HANNA: Or explore the feasibility.

21 MR. STRAIGHT: Well, I think Dr. Euler
22 has talked to our efforts and our intent in terms of
23 looking at the feasibility of it.

24 THE CHAIRMAN: I think we will accept,
25 Mr. Hanna, the fact that they are not doing it at this

1 time and they may be looking into it at the workshop
2 coming up.

3 MR. HANNA: Thank you, Mr. Chairman.

4 Q. Now, I don't know whether Dr.
5 MacLean, Mr. Straight is the person to deal with this.
6 We were talking before the break there with the
7 allocation of funds and I said I would go back and
8 review it. I have now had a chance to review it.

9 First of all, with respect to
10 Interrogatory Question 34, perhaps Mr. Gordon seeing
11 you answered this, you can confirm to the Board that
12 the duration of the terrestrial effects study is of
13 much shorter duration than the aquatic effects study?

14 MR. GORDON: A. When you say terrestrial
15 you are talking about the moose effects?

16 Q. Well, I think I've explained why I'm
17 talking about terrestrial effects with respect to moose
18 because of the featured species approach. So, yes, I'm
19 talking about moose effects?

20 A. Yes. If you look at the table
21 attached to Answer No. 34 you will see that our
22 estimate there shows that the moose effects program
23 would be of a shorter duration than the other two
24 programs.

25 Q. And, therefore, that the total

1 numbers that we were talking about 16, 33, and
2 \$3.5-million are reasonable estimates of the overall
3 importance that has been assigned in terms of
4 allocation of funds to these three studies; much more
5 so than 936?

6 A. I am sorry, you are throwing numbers
7 out at me and I can't follow them.

8 Q. Well, I thought before the break we
9 confirmed that there was 8-million specifically for
10 moose and then another 8-million, Dr. Euler, for other
11 wildlife studies?

12 DR. EULER: A. Yes.

13 Q. So I have got 16-million there and I
14 have, in the response to Question 34, 32.9-million for
15 aquatic effects, and I have 3.6-million for tourism.

16 MR. GORDON: A. Okay. I have never
17 added up the numbers that way. I'm assuming your
18 numbers are correct. What is your question?

19 Q. It's your numbers, not --

20 A. On the assumption that your totals
21 are correct. I have never added them up that way.

22 THE CHAIRMAN: All right. I think for
23 the purposes of the question, can we assume that those
24 numbers are correct? We will assume they are correct,
25 Mr. Gordon.

1 MR. HANNA: They were provided by the
2 Ministry.

3 MR. GORDON: What is the question?

4 MR. HANNA: Q. And I would like to go
5 back through and perhaps, as I say Dr. MacLean or Mr.
6 Straight, the criteria that we talked about and how
7 they justify this allocation of funds.

8 DR. MacLEAN: A. Maybe we can start off
9 by me clarifying something. There was never an
10 exercise that said there is a fixed amount of money and
11 we have to decide how to allocate that fixed pie of
12 money.

13 There were discussions within each group
14 of what a practical program would be to address the
15 needs, to assess the effects and effectiveness of each
16 of the guidelines. There were discussions within each
17 group, there was never a discussion of: We only have a
18 fixed amount of money, therefore, what are the criteria
19 to allocate between.

20 Our major concern was doing a good job of
21 assessing the effects and effectiveness of each of the
22 guidelines and putting forward reasonable cost
23 estimates to deliver that program. There was never any
24 set of rules for sharing something. That was never a
25 consideration.

1 Q. So I could perhaps conclude that
2 fisheries biologists are less avarice than wildlife
3 biologists?

4 THE CHAIRMAN: How can you conclude that
5 at all.

6 MR. HANNA: Q. Well, perhaps I can read
7 then from Exhibit 920, page 3. I'm looking at the
8 second paragraph at the bottom, it says:

9 "The participants in the ESSA workshops
10 suggested initially that four study areas
11 strategically located to include the
12 major forest types of northern Ontario
13 would be needed. When the costs and
14 logistics were examined, a compromise was
15 reached that two areas would be
16 essential."

17 Now, obviously there was some decision
18 made there as to what this group of people felt was the
19 appropriate compromise.

20 I presume from what Dr. MacLean has told
21 us that the fisheries biologists also went through
22 that, and I'm suggesting that, certainly from what I
23 can see here, that the wildlife biologists made a
24 fairly major compromise without having a fixexd budget
25 upon which to make that decision.

1 DR. MacLEAN: A. I think all of the
2 compromises you were talking about were made not on
3 any -- cost was a consideration internally to each of
4 the groups. There was no figure provided to them
5 saying you cannot exceed this.

6 But I think each of the groups was
7 mindful of putting forward a practical realistic
8 program and one that would satisfy, however, the
9 objectives that they had in mind to assess the effects
10 and effectiveness of the guidelines that they were
11 responsible for looking at.

12 Q. Okay. Dr. MacLean, seeing that you
13 haven't sat back and looked at allocation, let's sit
14 back and look at the allocation now and examine it with
15 respect to the criteria that we have set out.

16 A. For what purpose?

17 Q. What purpose? Well, I must admit it
18 is a good question to me, although I'm not supposed to
19 be answering questions. I think the question I see is
20 what this Board is supposed to do with what is being
21 put forward before them.

22 I have a concern that the Board may in
23 its decision decide to endorse this effects monitoring
24 program and the allocations that are associated with
25 it. If that is the case, then I do have concerns. I

1 appreciate the difficulties that you may have in that
2 respect.

3 MR. MARTEL: Mr. Hanna, earlier this
4 morning I asked you about this money because obviously
5 there was something that you didn't like and I tried to
6 get it from you then. It becomes more apparent now
7 that what you are saying is that there isn't enough
8 money for moose or terrestrial as opposed to what is
9 being spent for aquatic.

10 MR. HANNA: Correct.

11 MR. MARTEL: I think I asked you that
12 much earlier and you said no, no, I'm leaving -- I'm
13 talking about the various, and I think the term you
14 used was, criteria used to allocate the money.

15 Is your bottom line that there is not
16 enough money or there is too much money being spent on
17 one as opposed to what is being spent on the other; is
18 that what your objection is?

19 MR. HANNA: Yes, Mr. Martel. It's clear,
20 I apologize for any misunderstanding I had in that
21 respect. My objection is I would like the pie to be
22 bigger, but given the pie that we are faced with, the
23 allocation among the components of the pie, and that is
24 my concern.

25 THE CHAIRMAN: Well, why don't you ask

1 the witnesses whether in their view there should be
2 more money spent on wildlife monitoring as opposed to
3 aquatic monitoring, or whether the amount spent on
4 wildlife monitoring is insufficient in view of the
5 amount spent on aquatic monitoring, or questions along
6 those lines.

7 Obviously in your own case, Mr. Hanna,
8 you can bring in experts that can indicate that you
9 should be spending 14 times more on wildlife than you
10 are on aquatic or whatever, but this is what this group
11 and the ESSA workshop came up with in terms of how the
12 monies should be allocated, and we have already heard
13 from Dr. MacLean that there wasn't a cap put on it
14 before they came up with these allocations.

15 So why don't you canvass their views as
16 to whether these allocations are appropriate in terms
17 of the effects monitoring or whether there should be
18 some changes in their view into the amounts allocated
19 for each project, and then let's drop this topic and
20 move on to the next one.

21 MR. HANNA: Q. Dr. MacLean, given the
22 criteria that we have talked about and the fact that
23 you have told us that such a - how should I say -
24 broader examination of the allocations has not been
25 undertaken, can you see any reason for concern as to

1 the relative allocation of money between the
2 terrestrial and aquatic component, given the scale of
3 impacts that is likely to occur, the uncertainty, the
4 importance of the impact, and I believe your other
5 criteria was the cost of collecting the data?

6 DR. MacLEAN: A. I'm not concerned by
7 the relative allocation to the three programs and I
8 think you are carefully distinguishing between
9 terrestrial and the moose. I have no concerns about
10 the relative allocation between those three programs.

11 Q. And your concerns are that you feel
12 that the impacts on fisheries are of a higher
13 magnitude, double the order of magnitude that you
14 expect in terms of wildlife?

15 A. I did not say that. That is one of
16 the criteria.

17 Q. I'm trying to go through the criteria
18 and understand how you come to that conclusion, or what
19 is it that makes you feel that this allocation is
20 appropriate? Those four criteria or add any extra
21 criteria you want to put in, why we should invest twice
22 as much in aquatic effects as opposed to terrestrial
23 effects.

24 A. I think what we have tried to do is
25 design a program that addresses our uncertainties.

1 Part of the concern about uncertainties and the
2 relative ranking of those is inherent in those -- some
3 of those criteria that you have suggested.

4 So scale of impact is obviously a concern
5 and the uncertainties in estimating that scale of
6 impact were considered in terms of putting forward the
7 aquatic program, but I don't think there is any
8 inherent relative ranking between these programs based
9 on the funds allocated to them. There is no priority
10 inherent in the designation of funds to each of them,
11 which I think to me is what you are implying. I do not
12 see that.

13 Q. Dr. Euler, I realize that your
14 director has just spoken and it's a difficult question
15 to answer, but your director is a fisheries biologist
16 and not a wildlife biologist and I'm asking you, as a
17 professional wildlife biologist, if you have any
18 concerns?

19 DR. EULER: A. Yes, I have concerns.

20 Q. Thank you.

21 MR. HANNA: Mr. Chairman, I would like to
22 move now to a topic with respect to site degradation,
23 whether that will be dealt with in the effects
24 monitoring program.

25 Q. I believe, Mr. Tworzyanski, these

1 questions will be put to you. During Panel 1 we
2 discussed with Mr. Greenwood the potential for site
3 degradation due to soil disturbance during harvesting
4 and site preparation. Are you familiar with this
5 problem?

6 MR. TWORZYANSKI: A. I'm aware of it,
7 but perhaps you may be wanting to address your question
8 to Mr. Gordon. I'm familiar with the FMA aspects. In
9 terms of this panel of what you want to question,
10 perhaps Mr. Gordon can deal with that one in
11 particular.

12 Q. That's fine. I was trying to go by
13 the witness statement as to who the question should go
14 to. So if Mr. Gordon feels more comfortable answering
15 it, that's fine with me. Mr. Gordon?

16 MR. GORDON: A. Put the question,
17 please?

18 Q. Are you aware of the issue of site
19 degradation as a potential problem during timber
20 operations?

21 A. I'm aware that lots of people are
22 concerned about that, yes.

23 Q. Can you direct me to where in the
24 effects monitoring program the potential environmental
25 effects of site degradation due to harvesting or

1 regeneration, site preparation will be dealt with?

2 A. First of all, I have got to make sure
3 I'm on the same wavelength as yourself. Are we talking
4 about site degradation relative to the growing of a
5 forest or are we talking about site degradation
6 relative to size of a moose herd? What exactly are we
7 talking about here?

8 Q. No, we are talking about forest
9 growth.

10 A. Okay.

11 Q. Timber management, growing the forest
12 and the implications of site degradation on forest
13 growth, recognizing of course that that has
14 implications for a whole variety of other things, but
15 dealing now specifically with tree growth?

16 A. Okay. I believe what we have said is
17 that we will be, in each report of past forest
18 operations for each management unit, that is every five
19 years, we will be reporting on any significant
20 instances where site integrity has been negatively
21 impacted upon.

22 And, for example, in my lead evidence I
23 was talking about where you note rutting, soil
24 compaction, local ponding, excessive bulldozing, those
25 are things that come to my mind and if they are

1 happening on a significant scale, we will be reporting
2 about those in the report of past forest operations for
3 the given management unit. And if it is considered a
4 significant problem, we will be required to address how
5 we will handle that problem in the upcoming five years
6 and the following five years.

7 Q. Are you aware that many of the
8 difficulties associated with site degradation are not
9 readily visible to the eye?

10 A. There is no question about that and I
11 think we have tried to be fairly candid about that.
12 And so, for example, one of the things we have
13 identified some monies for are growth and yield
14 studies, and so over time we will be monitoring the
15 impact of a variety of timber activities on sites and,
16 for example, seeing whether or not that -- those
17 activities affect the long-term capability of that site
18 or an array of sites of producing wood over the long
19 term.

20 Q. And for my edification, how much
21 money has been allocated to that and is it your view,
22 will this lead to the ability to determine the
23 magnitude, duration, frequency, intensity of site
24 degradation impacts; is it focused to that specific
25 issue?

1 A. It is not specifically focused to
2 that issue.

3 Q. And how much money is allocated to
4 those studies?

5 A. In Exhibit 936 we identify an
6 additional \$300,000 per year for growth and yield
7 studies.

8 Q. But it is your view that within these
9 studies it will be possible either through the existing
10 study design or modifications to deal with site
11 degradation?

12 A. The growth and yield studies aren't
13 specifically being set up to monitor site degradation.
14 What may happen is you may pick up some information
15 that you may be able to equate back, you may be able to
16 equate back to a specific type of what you call site
17 degradation.

18 But the growth and yield studies aren't
19 specifically set up with the purpose of saying if this
20 happens, this type of site degradation, therefore, we
21 have this reduction in growth rates. Like, it isn't
22 being set up with that specific purpose.

23 Q. And there are no other studies to
24 deal with that specific issue that you are aware of?

25 A. Well, it's been my experience, and I

1 believe it was the evidence of the then Provincial
2 Forester and Mr. Greenwood and it is the Ministry's
3 position, that we don't have major problems in this
4 area and, therefore, we believe that it's not necessary
5 to set up extensive studies to monitor this.

6 Q. In paragraph 31 of your witness
7 statement on page 18 it indicates that the free to grow
8 assessments will be a reliable assessment of the
9 effectiveness of renewal/maintenance; correct?

10 A. That's correct. For a specific area
11 we are saying that free to grow assessment is a
12 benchmark assessment as to how you are moving along to
13 meet your long-term objectives. That's correct.

14 Q. Now, let us take a hypothetical that
15 you did have site degradation on a site, is it possible
16 to achieve free to grow status despite the fact that
17 you have got site degradation of a sort of, say, soil
18 compaction that might limit root penetration?

19 A. Yes. I would clearly assume - and I
20 know it has happened and I'm sure it will happen - that
21 if you have "site degradation" that you still will have
22 stands coming through to being free to grow.

23 Q. And in fact --

24 A. They may not be happening at the
25 speed that you hoped or they may be declared free to

1 grow in a different species mixture, but definitely the
2 stands will almost always become free to grow at some
3 point in time.

4 Q. Is it not the fact that these impacts
5 could persist long after that free to grow stage also?

6 A. That's correct. You may have
7 declared a stand for free to grow in a given forest
8 unit or working group, and if you have some local site
9 degradation it may impact on the growth rates of that
10 stand beyond the free to grow designation date.

11 Q. I would like now to deal with another
12 exhibit that was introduced last Wednesday and that is
13 Exhibit 960 which is the response to the National
14 Forest Sector Strategy Implementation Progress Report
15 and this --

16 --- Discussion off the record

17 THE CHAIRMAN: Okay.

18 MR. HANNA: Q. Mr. Tworzyanski--

19 MS. MURPHY: Sir, if I might just clarify
20 just for the purposes of the record so it is clear. As
21 I understand it, the exhibit that you have been
22 provided with was part of the response not the entire
23 document, which is fine, it's just I would suggest that
24 the description of what the exhibit is should be
25 accurate.

1 THE CHAIRMAN: Very well.

2 MR. HANNA: Q. Mr. Tworzyanski, I
3 understand that your current position is secretariat to
4 the group responsible for producing the National Forest
5 Sector Strategy; is that correct?

6 MR. TWORZYANSKI: A. My current position
7 was until the end of last -- beginning of this month
8 was Director of the Canadian Council, Forest Minister
9 Secretariat, which is the support group that supports
10 the chairman of the Council in his or her activities
11 during the year representing the Council.

12 MS. MURPHY: I think, just again for
13 clarity, we should indicate that the exhibit as
14 provided was missing a page, the second page of the
15 letter, and just so that you know we should add that
16 page.

17 MR. HANNA: It was inadvertent, Mr.
18 Chairman, a photocopying problem, but I will certainly
19 supply that additional page to you.

20 THE CHAIRMAN: Okay, let's get down to
21 the questions on the exhibit.

22 MR. HANNA: Q. First of all, in Ms.
23 Blastorah's covering letter she indicates the members
24 of Ministry staff that were involved in responding to
25 the Forest Sector Strategy; correct?

1 MR. TWORZYANSKI: A. I have, as Ms.
2 Murphy indicated, the first page of that letter. I
3 don't know if that continues. I know there are a
4 series of names on the first page, and it doesn't -- I
5 have the second page now, and it does not include any
6 further names. The names are on the first page, yes.

7 Q. Now, it is my understanding that the
8 National Forest Sector Strategy deals with more than
9 just growing trees, it deals with the whole matter of
10 integrating timber and non-timber values in timber
11 management planning; is that correct?

12 A. The strategy -- the National Forest
13 Sector Strategy, as it was put out, had 34
14 recommendations and generally they dealt with trade and
15 investment, the forest and its management which would
16 include integrated resource management, employment in
17 terms of forestry, research and development, and public
18 awareness.

19 Q. Now, in terms of the individuals that
20 prepared the response here, can you confirm for me that
21 none of them are employed as fisheries or wildlife
22 biologists by the Ministry?

23 A. I can confirm none of those people,
24 with the exception of H. Anderson, are biologists with
25 the Ministry. I don't know what Mr. Anderson's

1 position is.

2 Q. You don't know whether he is in the
3 Timber Sales Branch?

4 A. I don't recognize the name. Perhaps
5 another panel member might.

6 MR. CARY: A. That gentleman is Harvey
7 Anderson, and at the time he was working for the
8 Ontario Forest Tree Improvement and Biomass Institute,
9 OFTIBI. I think he is a forester by profession.

10 Q. Can you explain to me why it was felt
11 that this response should be prepared by foresters and
12 not have the input of any Ministry biologists?

13 MR. TWORZYANSKI: A. Okay. Perhaps I
14 should clarify a few things here that -- I can't
15 explain it to you, first of all. The questions were
16 sent out from Alberta. I should point out that the
17 Canadian Council of Forest Ministers has a rotating
18 chair and a rotating secretariat.

19 Each year the province whose minister is
20 the chairman provides the secretariat and the support
21 services, and one of those duties is to provide an
22 update to the National Forest Sector Strategy and that
23 is -- what you are questioning us on today is the
24 update that was made last year at the request of
25 Alberta.

1 That request would have come into the --
2 into Ontario and would have been assigned out of the
3 Forest Resources Group to those individuals listed here
4 based on the series of questions of which you've
5 provided a partial list here with some answers and then
6 it would have been compiled and sent off to Alberta.
7 So that's what would have happened.

8 Q. Can we turn to page 5. This is page
9 5 as indicated in the exhibit itself, I believe it may
10 be --

11 A. I don't have a page number. You will
12 have to identify it by the --

13 Q. It is entitled: Concerning the
14 Forest and Its Management, and it has got a number 4
15 beside the specific recommendation.

16 A. Yes, I have that page.

17 Q. Now, that specific recommendation --
18 or perhaps just to elaborate, the way this is
19 structured is it takes specific recommendations from
20 the National Forest Sector Strategy and then asks past,
21 present and future achievements and plans with respect
22 to each one of those recommendations; is that correct?

23 A. Yes, that's the structure.

24 Q. And this particular one is referring
25 to the matter of provincial conservation strategies;

1 correct?

2 A. Yes.

3 Q. And the past achievements is that you
4 support the Brundtland -- I believe it is supposed to
5 be Brundtland Commission Report and the IUCN Report,
6 and then it goes on to say that the present achievement
7 is the Ministry is coming before this Board with this
8 Class Environmental Assessment.

9 THE CHAIRMAN: Do you consider that to be
10 an achievement?

11 MR. TWORZYANSKI: A milestone, Mr.
12 Chairman.

13 MR. HANNA: An achievement, I think, only
14 when we've finished, Mr. Chairman.

15 Q. I was surprised to see that response.
16 I just want to understand. Is it your view then that
17 this EA and the results thereof will essentially form
18 the government's conservation strategy?

19 MR. TWORZYANSKI: A. No, that's not my
20 view, nor did I prepare this particular response, so I
21 really can't answer your question.

22 Q. Well, maybe to make this a lot
23 shorter. If that's going to be the answer to each one
24 of these, have you looked at the pages and the
25 questions that I have listed there?

1 A. Yes, I have.

2 Q. Are you going to be able to answer
3 any questions on any of those pages?

4 A. Yes, I am.

5 Q. Can you tell me the ones that you can
6 answer questions on?

7 A. Well, if you ask your question --
8 well, okay.

9 Q. Well, the ones that you have some --
10 you just told me you can't answer this because you
11 didn't prepare the response. I don't want to go
12 through the question and find out that you are saying:
13 Well, I can't respond. So tell me the ones that you
14 have some knowledge to respond on.

15 THE CHAIRMAN: Well, I don't think that's
16 appropriate. This is a cross-examination.

17 MR. HANNA: Okay, I will work through it.

18 THE CHAIRMAN: Ask your questions. If
19 you can't answer it, Mr. Tworzyanski, just say: No, I
20 can't answer it; if you can, give the answer. We can
21 work through this fairly quickly.

22 MR. HANNA: Q. Can we turn to what I
23 have as page 9. It is entitled at the top of the page:
24 Establishment of Short and Long-Term Objectives for
25 Forest Wildlife.

1 MR. TWORZYANSKI: A. I can assure you I
2 answered no questions on that topic.

3 Q. Thank you.

4 A. I dealt with any questions dealing
5 with timber management planning, and I believe there
6 are two.

7 Q. And you have no knowledge of who
8 prepared these other questions -- these responses?

9 A. Specifically no.

10 DR. EULER: A. Well, Mr. Hanna, it might
11 be helpful. I know that Ron Alton coordinated this
12 Forest Resources Group, okay, so he would have been a
13 coordinator. Somehow a letter or a memo would have
14 come to Wildlife Branch and we would have given Mr.
15 Alton this information.

16 Now, at this time I can't identify the
17 precise author, but that's the normal process by which
18 these things work. Nobody in forest would have
19 answered a wildlife question.

20 Q. Well, then, Dr. Euler, is it fair for
21 me to then ask you some of these questions?

22 A. Yes, I think so. I will be as
23 helpful as I can.

24 Q. Okay. Now, Dr. Euler, you are
25 familiar with the -- I haven't gone through the

1 National Forest Sector Strategy in providing the
2 background to these questions, I was expecting to ask
3 these questions of Mr. Tworzyanski and I felt he would
4 be knowledgeable about this.

5 Are you knowledgeable about the
6 background leading to these specific recommendations in
7 the National Forest Sector Strategy?

8 A. Well, I am knowledgeable to the
9 extent I have read that report, although it has been
10 some months now since I have read it. But I have read
11 it and I have a sense of it. I don't know how detailed
12 I will be able to be.

13 Q. Okay. Well, in terms of the
14 establishment of short and long-run objectives for
15 forest management, this is a recommendation coming out
16 of that sector strategy?

17 A. Right.

18 Q. It is my understanding that they are
19 talking here about the need for objectives on specific
20 defined pieces of land and specifically timber
21 management areas?

22 A. Okay.

23 Q. Now, it indicates under Present
24 Achievements that the establishment of these short and
25 long-term objectives will be achieved through the Moose

1 Habitat Guidelines.

2 Now, we have been around this many, many
3 times and I thought I had understood this, but when I
4 saw this answer I didn't feel I did understand it
5 because this suggests that these guidelines were going
6 to lead to these objectives. And can you explain that
7 to me?

8 A. Well, it strikes me that the
9 management guidelines, the management habitat
10 guidelines and our harvest -- our selective harvest
11 program will lead to the achievement of the objectives
12 in the moose program.

13 Q. No, this isn't the achievement. The
14 objective is to establish objectives.

15 A. Okay.

16 Q. And I am wondering how the guidelines
17 lead to the establishment of objectives for defined
18 pieces of land?

19 A. Oh well, they don't, the objectives
20 have to be established in another forum.

21 Q. Fine. Well, that's my understanding
22 also and that's the problem I had with that response.
23 So you have a problem with that response also?

24 A. Well, I'm not sure that I agree with
25 your interpretation. See, to go back to the first, it

1 says:

2 "Establishment of short and long-term
3 objectives..."

4 And so in the past achievements, I think
5 what they are trying to say is we have short and
6 long-term objectives for certain things and we gave
7 evidence on that in 10, and part of the process of
8 achieving the objectives is using management
9 guidelines.

10 Q. But is not the gist of the National
11 Forest Sector Strategy the need for these objectives on
12 defined pieces of land; in other words, the need for
13 forest, for timber and wildlife objectives on the same
14 piece of land to integrate planning?

15 A. I don't remember that from that
16 strategy, it may well be.

17 Q. Can you tell me how the response in
18 terms of future plans will lead to the establishment of
19 these short and long-term objectives?

20 A. Well, as you are aware, there is a
21 wildlife working group composed of members of the
22 public, I think the Board has heard some evidence on
23 that, and they will be bringing recommendations to the
24 Ministry and I think that's what that refers to.

25 Q. But they will not lead to objectives

1 for specific timber management plans, they will lead to
2 broad provincial objectives?

3 A. I would think so, yes. Yes.

4 Q. Can you give me any clarification
5 under the statement dealing with comments and concerns,
6 particularly the need for monitoring and cost studies
7 to verify the adequacy of the guidelines. I think we
8 have heard about it from the science point of view, I
9 haven't heard anything from the benefit/cost point of
10 view. What's referred to there?

11 A. That's true. Mostly our monitoring,
12 our effectiveness monitoring refers to the science,
13 that's true, and I think this is just pointing out the
14 need for us to have programs that evaluate both the
15 science and the benefit/cost.

16 Q. How is that need being addressed?

17 A. Well, you are aware in the
18 effectiveness monitoring program that speaks mostly to
19 the science.

20 Q. Right.

21 A. And I think the benefit/cost, in my
22 view, will be one of the things that comes out of this
23 hearing because I know that these issues are going to
24 be addressed in this hearing and much information is
25 available to discuss and work with and I would suspect

1 it will come from this hearing.

2 Q. Can we turn to the next page, please,
3 which is the recommendation dealing with the need to
4 develop integrated planning processes. Under Past
5 Achievement it indicates that -- excuse me, under
6 Present Achievement it indicates that the Timber
7 Management Planning Manual will be a primary means to
8 developing integrated planning processes. It says:

9 "Developing the integrated planning
10 process present achievements Ontario's
11 update is Timber Management Planning
12 Manual for presentation during the class
13 environmental assessment."

14 I am assuming that that means that that's
15 seen as how the Ministry is achieving integrated
16 resource planning?

17 A. Well, it's certainly one of the tools
18 that's used, yes. I don't think --

19 THE CHAIRMAN: Mr. Hanna, I think we are
20 getting back into the area that we have covered, been
21 around the horn a few times; and, that is, it appears
22 that what the Ministry means by integrated resource
23 management may have a different meaning from what you
24 understand the National Forest Second Strategy policy
25 may envisage, as well as what the U.S. may do, as well

1 as what other jurisdictions around the world may do.

2 We are not dealing, as the Board
3 understands it, with integrated resource management in
4 terms of all of the resource programs applying to the
5 same defined piece of territory or land base at one
6 time. I think that is the Board's understanding, if it
7 is incorrect the panel could advise.

8 Now, other jurisdictions have taken a
9 different approach, we have heard that, and when they
10 use the terms they may well use the terms in the
11 context of the approach that they use and, therefore,
12 to try and compare the Ministry's in this application
13 and in their practice as to what they mean by
14 integrated resource management directly to some of
15 these other programs, I suspect, is going to get you
16 absolutely nowhere; they are not comparable, they do
17 not mean the same thing.

18 Whether or not the Ministry's approach is
19 appropriate or not is a matter for you to address in
20 your own evidence, but we have heard what they do, we
21 have also had an indication of what some other
22 jurisdictions do and the two, if I can put it bluntly,
23 are not the same; and, therefore, this line of
24 questioning to try and compare the two is, I suspect,
25 like comparing apples and oranges, it won't work.

1 That doesn't mean to say that one is
2 better than the other or not better than the other,
3 that is another area to canvass, I would suspect, in
4 your own case.

5 Have I missed something, Panel, in terms
6 of the way the Board has perceived what you have had
7 led to this point?

8 DR. EULER: No, sir, you haven't.

9 MR. HANNA: Thank you, Mr. Chairman.
10 I think the Board's direction is probably appropriate.
11 I am sure it is appropriate, it is not probably
12 appropriate.

13 The only reason I was entertaining this
14 line of questioning is I wasn't sure there wasn't
15 something going on that I didn't understand in terms of
16 the responses here and...

17 THE CHAIRMAN: I think the Ministry has
18 responded to this questionnaire in the light of the way
19 they perceive that they are undertaking integrated
20 resource management. If those responses do not accord
21 with what you think the national sector program would
22 mean by such a response, so be it, but I think that's
23 what the Ministry has done, at least that's what it
24 appears to the Board.

25 DR. EULER: Yes, sir.

1 MR. HANNA: Perhaps then I will terminate
2 this line of questioning with just one question for Mr.
3 Tworzyanski and I will be finished.

4 Q. Mr. Tworzyanski, excuse me for my
5 twisted tongue, the Ministry of Natural Resources was a
6 signatory to the National Forest Sector Strategy?

7 MR. TWORZYANSKI: A. That's correct.

8 Q. And they were involved in the
9 formulation of the National Forest Sector Strategy?

10 A. Yes, they are.

11 Q. Do you have any reason to believe
12 that the Ministry of Natural Resources misunderstood
13 what was meant by these terms as used in the National
14 Forest Sector Strategy as opposed to the way that your
15 Ministry uses them? Did they understand --

16 A. The Ministry of Natural Resources is
17 my Ministry.

18 Q. I appreciate that. Do you have any
19 reason to believe that the Ministry used the terms
20 differently in the National Forest Sector Strategy as
21 opposed to the way it has been used in the terms of
22 this hearing?

23 A. Which terms?

24 Q. Well, IRM, we might as well go with
25 integrated resource management, that is one we will

1 start with.

2 A. Okay.

3 Q. Does the Ministry have a different
4 view of integrated resource management as laid out in
5 the National Forest Sector Strategy?

6 A. It could have, yes. The strategy
7 takes together the information on integrated resource
8 management put forward by the forestry sector of which
9 governments are only one part, you have educational
10 institutions, organizations such as the one that you
11 are representing.

12 Q. The forest industry?

13 A. The forest industry, research and
14 development and so on, and they all comment on
15 various -- well, to put the strategy together there
16 were a series of forums held on a variety of topics and
17 through a workshop -- series of workshops the strategy
18 was developed.

19 So as it is an amalgamation of what the
20 forestry sector thinks which, you know, to me says that
21 there may be disagreements or different interpretations
22 between different provinces or between different parts
23 of the sector.

24 And if you read the recommendations you
25 will find out that they are worded in such a way that

1 it is food for thought, it is something you should
2 consider. Some parts of the sector may already be
3 doing what the recommendations say, some parts may find
4 it is something appropriate to be doing and may look at
5 it. It deals with policy in a very broad scale, not in
6 something very specific.

7 Q. But it is making very specific
8 recommendations though in terms of establishing
9 objectives, et cetera, et cetera, et cetera?

10 A. Well, you are referring to
11 recommendation 7 which perhaps I can read it for you.
12 It says:

13 "It is recommended that foresters
14 and wildlife managers cooperate in the
15 review and development of forest,
16 fisheries, wildlife and integrated
17 management. More specifically, the
18 review might consider..." and then it
19 lists:

20 "Establishment of short and long-term
21 objectives for forest wildlife,
22 developing integrated planning processes,
23 converting wildlife information to usable
24 forest technology, implementing
25 harvesting and silvicultural practices

1 and assessing the achievement of
2 objectives in terms of wildlife response,
3 and the examination of cost and benefits
4 to support the enhancement of wildlife
5 habitat."

6 And it says that the review might
7 consider those particular items.

8 Q. Right. And you have given a response
9 to how you see the Ministry in this particular response
10 giving consideration to those?

11 A. Yes, the response that we have given
12 reflects how the Ministry has either given response or
13 how the Ministry views its status in terms of that
14 recommendation.

15 MR. MARTEL: Other provinces would have
16 different responses to the same question?

17 MR. TWORZYANSKI: Oh absolutely, Mr.
18 Martel.

19 MR. MARTEL: So everybody is putting
20 forth his own opinion?

21 MR. HANNA: Yes, Mr. Martel. In fact,
22 the combined -- the compiled response is in Exhibit
23 593.

24 MR. TWORZYANSKI: I believe that's the
25 National Forest Sector Strategy for Canada,

1 Implementation Progress Report; is that -- that is 593?

2 MR. HANNA: Yes, it is.

3 MR. TWORZYANSKI: Yeah. And that's what
4 I was reading from on page 11, Mr. Chairman.

5 THE CHAIRMAN: And is there any
6 expectation in your view on the part of the collective
7 group that there would be unanimity of approach, that
8 there would be the same approach undertaken by all
9 elements of the sector, both provinces, the industry,
10 et cetera, across the country?

11 MR. TWORZYANSKI: Not at all.

12 THE CHAIRMAN: And that was never its
13 purpose in your view?

14 MR. TWORZYANSKI: No, it wasn't.

15 MR. HANNA: Q. What was the purpose, Mr.
16 Tworzyanski?

17 MR. TWORZYANSKI: A. The purpose of
18 what?

19 Q. The National Forest Sector Strategy?

20 A. Was to bring together the forestry
21 sector and to promote forestry in terms of utilization
22 by both the consumptive and non-consumptive sectors and
23 to raise the awareness of forestry through forestry
24 education basically, and to provide a broad policy
25 background for governments or for other agencies to

1 address forestry issues.

2 Q. With the hope that that would filter
3 down through the various agencies and groups that were
4 represented?

5 A. Those are your words, but that would
6 be an expectation, yes.

7 Q. Mr. Straight, giving you a breather
8 there. Perhaps we can, come back and discuss another
9 topic with you.

10 During your cross-examination in Panel 8
11 there was considerable discussion regarding the model
12 developed by ESSA and I believe it was indicated that
13 it was not suitable for predictive purposes. Do you
14 recall that?

15 MR. STRAIGHT: A. I believe most of that
16 discussion was with Dr. McNamee, but I do recall it,
17 yes.

18 Q. Dr. McNamee is not here with us so,
19 given that, I will direct these questions to you seeing
20 that you were there. Now, I am looking specifically at
21 Volume 69 starting at page 11771.

22 A. Yes.

23 Q. And Mr. Armstrong was questioning the
24 matter of what it will take to make the conceptual
25 model developed by ESSA that could not -- that was not

1 quantitative and was not verified and supposedly was
2 not used in any way--

3 A. That's not only -- true.

4 Q. --in a quantitative way?

5 A. Okay, not in a quantitative way,
6 that's right.

7 Q. And specifically the question was
8 asked:

9 "Well, you indicated it needs a great
10 deal more work. Is that in the area of
11 data collection or the model itself?"

12 And the response was:

13 "Both. Refinements, the only group who
14 have any inkling of what is in there
15 right now are the people who are
16 involved were there at the workshop.
17 It takes a great deal of work to take a
18 model of that sort and to bring it into a
19 working resource management tool. I make
20 that statement because we have been asked
21 in our firm to build tools of that sort
22 and it takes many years and it takes a
23 lot of time."

24 MS. MURPHY: That is the response of Dr.
25 McNamee, obviously.

1 MR. HANNA: Q. And then in the
2 transcript on page 11805, the same volume, Mr.
3 Armstrong was further pursuing that subject and Dr.
4 McNamee responded to how much work would be required,
5 and he said:

6 "Let me give you one example of a model
7 of that sort."

8 He continues on to describe it and he
9 concludes:

10 "It took approximately 20 man years worth
11 of work to get the model for, as I say,
12 a single resource value from start to end
13 to that get that model in a form that (a)
14 did contain the best information as to
15 how a stand grows in that area and so
16 on and to get it to a state where the
17 people who are going to use it felt that
18 it was a tool that they could in fact
19 use."

20 And then he says later on there after
21 several short questions:

22 "I would say that if there was any
23 interest in taking the model we had built
24 and making it into a tool of that sort,
25 it would take approximately the same

1 amount of time. One should never
2 underestimate the amount of time it
3 takes."

4 Now, I provided to you on Wednesday last
5 a paper by Schuerholz, Dr. McNamee and Massie and
6 that's Exhibit 962. It is my understanding that this
7 in fact is an operational model that is being used to
8 make management decisions.

9 Have you read over that document and was
10 it used for making a management decision?

11 MR. STRAIGHT: A. I have not read that
12 document, but Dr. MacLean and Dr. Euler have, and I
13 think perhaps, Dr. Euler, can you respond to that?

14 DR. EULER: A. Yes. I think it is
15 probably a reasonably good term to call it a model used
16 in management decisions or a management decision type
17 model.

18 Q. And it was used in a predictive way?

19 A. Well, no. You see, he is very clear
20 that he says -- he says right here on page 25:

21 "This type of model will never be able to
22 provide precise quantitative predictions
23 about the effects of habitat manipulation
24 and hunter harvest on ungulate
25 populations, nor should it be used for

1 that purpose. It would be foolish to
2 assume such a model could be built and
3 dangerous to interpret the of this model
4 with that intent."

5 Q. Right. And then he continues on and
6 says, however, that the purpose of the model is to gain
7 insights to look at how the population responds in
8 terms of making management decisions?

9 A. That's right.

10 Q. In a quantitative way?

11 A. Well, no, let's read into the record
12 what he said.

13 "It is important, however, to strive for
14 a model which captures the essential
15 qualitative behaviour of the ungulate
16 population in response to alternate
17 habitat management strategies."

18 Q. Doctor, just for the clarification of
19 the record, can we just be specific about where you are
20 reading from?

21 A. Yes, page 25, first column under the
22 heading Applications of the Model.

23 Q. Right.

24 A. There is quite a difference between
25 the point that they are making here between a

1 quantitative predictor and a qualitative assessment.

2 So certainly in the management decisions you would use
3 this in a qualitative way to indicate sort of the
4 direction of a response, but it is quite a different
5 matter to predict something quantitatively.

6 Q. But is not the key operative word
7 here 'precise quantitative predictions', 'precise'?

8 A. Okay.

9 Q. The model does provide quantitative
10 predictions, but what you are saying is we have to
11 recognize that those predictions have a high level of
12 uncertainty associated with them?

13 A. Well, that's another way of saying
14 it, which I would interpret as it is a very qualitative
15 kind of prediction. It's true, both of these words and
16 particularly the word 'predict' is extremely difficult
17 in this situation to know exactly what we mean by
18 predict.

19 I mean, the whole business of science is
20 predicting with very structured statements about those
21 predictions, you know, 95 per cent confidence limits
22 and that sort of thing, and I think what these authors
23 are trying to warn us against is getting too
24 quantitative, too predictive and too precise when the
25 data and the background just won't let you do that.

1 The uncertainties are so high you can't.

2 Q. Right. So our standard, if you will,
3 measures of certainty and the 95 per cent confidence
4 limit or whatever, cannot be applied in resource
5 management decisions because of the number of variables
6 involved in the uncertainty of data; that's what you
7 are telling me?

8 A. Right, exactly.

9 Q. Okay. But that doesn't preclude the
10 use of quantitative tools? That's simply saying --

11 A. Well, that's true, yes.

12 Q. What you are simply saying is, you
13 have to use those results with care?

14 A. Exactly, yes.

15 Q. And is that not a truism for
16 virtually anything that you are talking about in the
17 resource management field? Is it really realistic that
18 we are ever going to have a level of confidence that
19 will pass the rigorous test of science in the 95 per
20 cent confidence limit?

21 A. We will always be back somewhere
22 below that, yes.

23 Q. So as a resource management
24 decision-making tool, these things have -- these types
25 of quantitative models have value?

1 A. Yes, they do.

2 Q. And they have value in making
3 decisions such as the types of decisions we are faced
4 with in terms of timber management planning?

5 A. Yes.

6 Q. And yet given the fact that a
7 tremendous amount of money was invested in the ESSA
8 exercise, we don't have a tool of that sort at the
9 present time?

10 A. Well, the ESSA exercise has a model
11 associated with it that gives some indication of
12 direction.

13 Q. It does?

14 A. Yes, from a broad general concept.
15 It is certainly not predictive with any degree of
16 certainty, but it points out the broad general
17 direction that would be expected if a certain
18 management action is taken. It could --

19 Q. My understanding was that the model
20 resided at the University of British Columbia and that
21 the Ministry is not using it in any way whatsoever,
22 they in fact don't even have a copy of it?

23 A. Well, is the issue whether we are
24 using it or what it does, or what's the issue?

25 Q. Well, I think it's -- my issue

1 certainly is, is the fact that this is a management
2 tool that can be used, here's an example of a
3 management tool that's actually being used that's very
4 similar to the tool that ESSA developed for you in
5 terms of moose and yet we aren't using it?

6 A. Well, it needs some more work before
7 we can start using it and this is one of the things
8 that may well come out of our effectiveness monitoring
9 program, is do some work on it - that's a very clear
10 possibility - and then evaluate its applicability to
11 our management action.

12 Q. But we are always going to want to do
13 more work, Dr. Euler?

14 A. Well, yes, those -- yes, we love our
15 work and we want to do more, that's right.

16 DR. MacLEAN: A. I would point out too
17 that is not, as you claimed, a model similar to the one
18 that ESSA developed for us. Peter McNamee was involved
19 in both exercises. This isn't a model that predicts
20 anything that can be assessed in the field. You cannot
21 assess productive capacity for wildlife in the field.

22 That's not its intent. Its intent was to
23 provide a management gaming tool to look at a
24 particular set of decisions, but that suite of
25 decisions couldn't be assessed in the field based on

1 this model.

2 Q. Are you suggesting we do have a model
3 to measure productive -- what was your term?

4 A. The model that was worked on in
5 Exhibit 962 is one that attempts to predict productive
6 capacity for a number of wildlife species, but as they
7 quite clearly point out, it is not something that we
8 can assess in field terms, it is not something that we
9 can run out and say: Well, what is the productive
10 capacity of moose in this particular place.

11 Q. And, Dr. MacLean, why did they take
12 that approach?

13 A. I think they were faced with a
14 particular management decision and they attempted to
15 make that management decision using some quantitative
16 tools. I don't think they were engaged in the same
17 exercise we were which was to design an assessment
18 program.

19 Q. Perhaps to be more specific - and I
20 can't find a specific reference right at the moment,
21 but there is reference made to the fact - and Dr. Euler
22 certainly presented this evidence on several occasions
23 in the past, that wildlife populations are not
24 controlled simply by habitat, but there is a multitude
25 of other factors.

1 Seeing that this model dealt solely with
2 habitat, they didn't have information in terms of other
3 population factors, in order to not have to deal with
4 those factors they said: We will deal with the
5 production capacity accepting those other things may
6 prevent realization of that capacity. Is that not the
7 underlying reason they took this approach?

8 A. That may be correct, I'm not sure.

9 Q. Dr. Euler, is that your reading of
10 their rationale for this approach?

11 DR. EULER: A. Well, my -- I guess I
12 have a little different understanding of their
13 approach. They attempted to bring in some of these
14 other factors into this model, such as hunting and --
15 such as hunting.

16 Q. They incorporated those in there, but
17 because they realized that the actual effect of those
18 may not be reflected immediately, it is reflected in
19 the long-term capacity of the habitat, that's the
20 reason they took that approach?

21 A. I accept that.

22 THE CHAIRMAN: So where do we go from
23 here, Mr. Hanna? What are you trying to get out of
24 this line of questioning? I take it that you would
25 like to see quantitative tools used in resource

1 management decisions?

2 MR. HANNA: I think the point is, Mr.
3 Chairman, that we have this sort of tool available to
4 us at the present time. The investigations that we
5 have done is this tool has been used in operational
6 decisions in terms of making timber management
7 decisions, it is being used at the present time.

8 Notwithstanding that, we are certainly
9 supportive of the Ministry collecting more information,
10 we do feel that there is sufficient tools out there,
11 and in fact the person that actually was involved in
12 developing at least the conceptual model for the
13 Ministry has been the author of one of those tools and
14 I want to confirm with this panel that there is no
15 reason that this sort of tool could not be used at
16 least in the interim until more information, a better
17 tool becomes available to us.

18 THE CHAIRMAN: Okay. Do you want to
19 answer the specific question so we can move on.

20 Can this tool be used in the interim and
21 would it provide you with the type of confidence level
22 that you would like to see in your management decisions
23 given its state of development at this point in time?

24 DR. EULER: What tool is that, sir?

25 THE CHAIRMAN: A model that tries to

1 predict quantitative or relies on quantitative data
2 such as is exhibited in Exhibit 962.

3 DR. EULER: And Mr. Hanna is suggesting
4 that that's available to us now, because I don't know
5 where it is if it is?

6 THE CHAIRMAN: I think that's what he
7 said.

8 DR. EULER: I am not aware that it
9 exists.

10 THE CHAIRMAN: Well, even it did exist
11 and even if it is being used, would you consider it
12 appropriate to be used?

13 DR. EULER: Oh yeah, this is a good job,
14 sir.

15 THE CHAIRMAN: Okay.

16 DR. EULER: It's a very nice piece of
17 work. It took a long time and a lot of hours, but it's
18 a nice piece of work.

19 MR. MARTEL: Is it being used anywhere?

20 DR. EULER: Well, it appears to be used
21 in British Columbia based on just what we have read
22 here, that it is used -- again, sir, you have to
23 understand now, using something in a management
24 decision is really a broad statement and when you make
25 a management decision you would factor in a whole large

1 number of issues and this would be one of them.

2 And I suspect, just reading it, it's a
3 nice piece of work, it would be a key tool among maybe
4 a half dozen tools that they are using.

5 We have really done the same thing in
6 Ontario, for example, we used a simulation model in
7 working up the moose program. It happened to be just a
8 population model, it didn't have any habitat component,
9 but it was part of our decision-making process. We are
10 not unfamiliar with the process and what we are saying
11 is that we need a better tool in the moose business so
12 we are putting quite a lot of effort into it.

13 Now, it is really hard for us to say
14 exactly what that tool is going to look at when it is
15 done, but it is going to have elements that are similar
16 to what is here, surely it will because it is a nice
17 piece of work, and we think that our moose program is a
18 good piece of work too.

19 MR. HANNA: Q. You didn't mention ONEPOP
20 I suspect because of - I am not raising that ridicule
21 again - but could ONEPOP and this model or type of
22 model be integrated to deal with both those other
23 management programs that the Ministry--

24 DR. EULER: A. Oh sure.

25 Q. --has in terms of hunter controls and

1 habitat controls?

2 A. Yeah. When I looked at the lit cited
3 in this -- the literature that was cited in this paper,
4 a number of the people who worked on ONEPOP were
5 involved in this as well. Sure, that's the way to go
6 and I think all of us wish they were there, but we are
7 not quite there yet.

8 Q. One last thing here, Dr. Euler,
9 associated with this and that's on page 24, it is under
10 Model Documentation, the second paragraph there.

11 A. "Some of the relationships..."

12 Q. Yes.

13 A. Yes, I see that.

14 Q. What they are indicating there is
15 that you are always faced with uncertainty in
16 management decisions and you are better to use the best
17 available information to make decisions now and try to
18 improve that over time?

19 A. Yes.

20 Q. And I suspect that you agree with
21 that philosophy?

22 A. And you are right, I do.

23 Q. And is that a tool that would be
24 available to make the best use of available information
25 and knowledge?

1 A. Is that a tool...?

2 Q. Could you use that tool as a way to
3 take advantage of that knowledge and information?

4 A. Yes, although not this specific piece
5 of paper because this is a British Columbia item, but
6 certainly the generic ideas expressed here are very
7 useful to us. We can't go get this tool and bring it
8 into Ontario and just start implementing it, if that's
9 what you are asking.

10 Q. No. And what you would have to do to
11 implement it in Ontario, you would have to take the
12 type of expertise that the Ministry has and, if you
13 will, calibrate it; in other words, put in the
14 information that would appropriate for Ontario?

15 A. Sure, modify it slightly maybe in
16 certain ways, exactly.

17 Q. Comparable to what you did with
18 ONEPOP?

19 A. Yes, comparable and comparable in our
20 ESSA workshop. Our staff are going to take the best of
21 all of that information and produce something that will
22 be at least generically similar to this. It may come
23 out in a different form, it maybe written in a
24 different way, but generically it will be very, very
25 similar.

1 Q. So we have a prototype, we simply
2 need to, if you will, adapt it to Ontario?

3 A. I know, but that's not simple. You
4 know, it is really not simple, it is quite a
5 complicated process, that's why it costs so much money
6 and takes so long.

7 MR. HANNA: Mr. Chairman, could I have a
8 moment to consult with Dr. Quinney?

9 THE CHAIRMAN: (nodding affirmatively)
10 ---Discussion off the record

11 MR. HANNA: Mr. Chairman, we have been
12 fortunate to be able to have breaks here because in our
13 cross-examination - again one of those situations where
14 Dr. Quinney and I have worked on this - I hate to do
15 this, it seems like every time I estimate that I am
16 going to need time that I can make it shorter, but I am
17 actually going to be able to finish perhaps even before
18 noon, so I just advise the Board of that, we may have
19 an early lunch.

20 THE CHAIRMAN: Very good.

21 MR. HANNA: I hope that I am not forced
22 by the trends in the past to be able to project into the
23 future, but I have done my best to make it as short as
24 possible.

25 THE CHAIRMAN: We will rely on your

1 predictive model.

2 MR. HANNA: In a qualitative way.

3 Q. I believe this is a question to
4 either -- I think it's probably Mr. Cary and it has to
5 do with the witness statement on page 49, it has to do
6 with the silvicultural information system.

7 And I believe it is indicated here, Mr.
8 Cary, it is over actually on to page 50, that FMA
9 holders may opt to choose the SIS or a comparable
10 system; correct?

11 MR. CARY: A. Yes, that's correct.

12 Q. Now, why have not all of the
13 management units been asked to use the same information
14 system?

15 A. In Dr. Osborn's lead evidence he
16 talked about the silvicultural information system and
17 specifically about this topic, so perhaps he could
18 better answer this one.

19 Q. I think that's only fair. Dr. Osborn
20 hasn't had a chance to answer a question.

21 THE CHAIRMAN: Mr. Hanna, I don't want to
22 interrupt this area, but this was rather extensively
23 covered by Dr. Osborn as to why the companies are on
24 different systems and how in certain areas there is
25 uniformity in terms of the presentation of information

1 but in other areas there can be a variation.

2 MR. HANNA: Perhaps I will retract that
3 question and just go on to the next one because there
4 really isn't any point in going through that again.

5 Q. The purpose of my question is: Those
6 companies that do collect information outside of the
7 SIS system, will that information be converted and
8 added to the SIS database?

9 DR. OSBORN: A. It's still under review.

10 Q. Why would you not want that
11 information in the SIS database?

12 A. That wasn't what you asked, and if
13 that's the question --

14 Q. No, I am asking you a new question.

15 A. The information contained within that
16 may well be of value to not only the company, but also
17 to the Crown. Like everything else, it does not come
18 for free; to move it from their system to whoever's
19 system is going to cost that somebody time, money and
20 effort, as was explained in the evidence in lead.

21 Q. And who will be responsible for
22 picking up this cost in terms of manpower, time and
23 effort?

24 A. That I don't know, but more relevant
25 is that the subject is under review within a committee

1 within the Ministry of Natural Resources which includes
2 representatives from the forest industry. It will be
3 between those two parties to assess the implications of
4 moving those data to and fro and who will do what work.

5 MR. HANNA: Mr. Chairman, I am not sure
6 how far this has been canvassed with the Board. If the
7 Board feels comfortable in understanding the benefits
8 and disbenefits of that I won't pursue the question any
9 further. If you see some merit in it, I will it.

10 THE CHAIRMAN: I think we have gone over
11 this with Dr. Osborn's lead evidence.

12 MR. HANNA: Then I will not follow up on
13 the questioning and I think that's the end of my
14 questions for this panel.

15 Thank you very much.

16 THE CHAIRMAN: Very well. Thank you.

17 DR. EULER: Mr. Chairman, may I have a
18 moment to say something?

19 THE CHAIRMAN: Yes.

20 DR. EULER: I am just a little concerned
21 about one of the questions that was asked this morning
22 and I want to put that concern to you and maybe we can
23 do something about it. Mr. Hanna was talking to Dr.
24 MacLean relative to priorities and then he came to me
25 and said: Do you have any concerns, and I said yes.

1 Well, I do have some concerns and I
2 thought maybe we would explore them, but he didn't
3 choose to and that's fine. I just want to assure you
4 that we have had a lot of very vigorous discussions in
5 the Ministry about these issues and none of these
6 concerns are of huge moment.

7 THE CHAIRMAN: Well, why don't we handle
8 it this way, Dr. Euler: Your counsel will have an
9 opportunity for re-examination.

10 DR. EULER: All right, that's fine.

11 THE CHAIRMAN: I would suspect she may
12 wish to canvass that area - maybe she won't - but if
13 she wishes to, that would be the appropriate time for
14 you to explain what you meant by that.

15 DR. EULER: Fine. Thank you, Mr.
16 Chairman.

17 MR. HANNA: Well, I shall leave it to Dr.
18 Euler's professional opinion and his counsel to fulfill
19 that further.

20 THE CHAIRMAN: Very well, Mr. Hanna.

21 We will break for lunch until 1:30. The
22 Board has to spend time during the lunch hour with
23 respect to preparation for the scoping session this
24 evening, and we will commence right after lunch with
25 Ms. Kleer--

1 MS. KLEER: Yes.

2 THE CHAIRMAN: --on behalf of NAN.

3 Thank you.

4 ---Luncheon recess taken at 11:50 p.m.

5 ---On resuming at 1:45 p.m.

6 THE CHAIRMAN: Thank you. Be seated,
7 please.

8 DR. EULER: Mr. Chairman, I have an
9 undertaking that was given to me. Would you like me to
10 deal with that undertaking now or shall I wait?

11 THE CHAIRMAN: Well, I suppose we can
12 deal with it prior to starting Ms. Kleer's...

13 DR. EULER: This is an undertaking that
14 was given to us by Mr. Cassidy during his
15 cross-examination and he asked that we provide some
16 more information before the panel was finished and the
17 subject is examples of industry cooperation in wildlife
18 forestry studies, and I have a list of several of those
19 and I can briefly, very briefly summarize them if you
20 wish.

21 THE CHAIRMAN: Are you going to file that
22 list at all?

23 DR. EULER: We can file it, sir, it is
24 just a matter of what is the most convenient thing.

25 MR. CASSIDY: Inasmuch as it is an answer

1 to an undertaking, it would probably be appropriate to
2 file it, Mr. Chairman, like other answers that have
3 been provided, although I must admit I haven't seen it
4 yet.

5 MS. MURPHY: I think it would probably be
6 simplest to make copies of it and perhaps tomorrow have
7 it marked rather than go through....

8 THE CHAIRMAN: Okay.

9 MR. CASSIDY: That's fine, thank you.

10 THE CHAIRMAN: Why don't we do it in that
11 fashion.

12 DR. EULER: Yes, thank you.

13 THE CHAIRMAN: Ms. Kleer?

14 MS. KLEER: Good afternoon.

15 CROSS-EXAMINATION BY MS. KLEER:

16 Q. Okay. I am going to begin with the
17 area of concern compliance monitoring and most of my
18 questions will be directed to you, Mr. Cary.

19 Okay. If we can turn to the draft
20 policy on area inspection which is page 54 of the
21 witness statement. Do we have any best estimate as to
22 when this policy will be formalized or available?

23 MR. CARY: A. Yes, we do. We are
24 committed to having it in policy by the end of this
25 calendar year and then it will be effective April the

1 1st, 1990.

2 Q. Is it expected that there will be any
3 changes or any major changes to the policy beforehand?

4 A. Nothing substantive.

5 Q. All right. Okay, I would like to
6 confirm a few points. Will all of the areas of concern
7 be inspected under the area of concern compliance
8 monitoring program?

9 A. Each area of concern will be
10 inspected.

11 Q. And will the area of concern
12 compliance monitoring program form part of the timber
13 management plan itself?

14 A. Yes, it will.

15 Q. All right. And are the terms and
16 conditions that deal with this compliance monitoring
17 program Nos. 17 and 49 or are there any others? I
18 believe that's all there is, but I just want to confirm
19 that.

20 A. What were those numbers again?

21 Q. 17 and 49?

22 A. May I just check that, please. Term
23 and condition 17 speaks to our commitment that timber
24 management plans outline a compliance monitoring
25 program of inspections of operations in areas of

1 concern, and 49 speaks to the monitoring of the
2 prescriptions for operations in areas of concern.

3 And Mr. Gordon has brought to my
4 attention that in term and condition No. 8, which deals
5 with report of past forest operations, part (d) of that
6 term and condition deals with the provision of a
7 summary of the monitoring results for areas of concern
8 as part of the report of past forest operations.

9 Q. Thank you. When you read these terms
10 and conditions as a whole, would any of these indicate
11 to you that the draft policy which will become policy
12 is going to be applied as part of the areas of concern
13 compliance monitoring program? Would that be apparent
14 to you?

15 A. The draft policy that you are talking
16 about is for area inspections.

17 Q. Okay.

18 A. And area inspections are a key part
19 of your compliance monitoring methodology, so it's the
20 area inspections that we are talking about when we look
21 at page 54, for example, of the document, of our lead
22 evidence.

23 Q. Well, all I am getting at is,
24 wouldn't it be useful to include somewhere in the terms
25 and conditions that this policy will apply just for

1 reference for persons who may not have been involved in
2 this hearing, for instance?

3 A. I don't think that's necessary. We
4 are committed to conducting compliance monitoring on
5 areas of concern and we have committed to developing an
6 upfront compliance monitoring program for areas of
7 concern in the TMP, in the timber management plan. So
8 I don't see that the inclusion of this policy would add
9 much to a term and condition.

10 Q. All right. If we can turn to page
11 56, and we will be dealing with point (b), subpoints
12 (a) and (b), and these deal with the frequency, nature
13 and timing of inspections in areas of concern. And I
14 will also be looking at Exhibit 925 which includes
15 NAN's Interrogatory No. 3.

16 I am just going to read the first part of
17 Question 3 sub (a) and then read part of the answer and
18 ask whether you agree with it.

19 "Please provide a list of the criteria
20 used to determine the sensitivity and
21 importance of resource features and
22 indicate whether this list is in a
23 government document. If said list
24 is contained in a document, please
25 provide a copy."

1 And in the answer to paragraph (a) at the
2 bottom, it says:

3 "At the level of the individual forest
4 management unit, the subjects of
5 sensitivity and importance are addressed
6 in the development of prescriptions for
7 areas of concern in each timber
8 management plan."

9 Do you agree with that answer?

10 A. Yes, that's the answer we provided.

11 Q. That's right. And is there anything
12 other than the development of prescriptions where the
13 subjects of sensitivity and importance would be
14 addressed?

15 A. I'm not sure I understand your
16 question. Is there any other...?

17 Q. Is there any other point in the
18 process, other than in the development of
19 prescriptions, that sensitivity and importance of the
20 resource feature will be addressed?

21 A. Nothing comes to mind. Our area of
22 concern compliance monitoring program is developed as
23 for each area of concern or it may lump areas of
24 concern; and the timing, the frequency and the nature
25 of inspections may address some of the more sensitive

1 areas of concern, the ones that need to be protected
2 and inspected quite rigorously.

3 Q. Would you agree with me that the
4 Class EA Document and the terms and conditions together
5 do not require that the two factors shown on page 56,
6 which are sensitivity and importance of the resource
7 feature and the possibility of significant
8 environmental damage, will have to be recorded; in
9 other words, will this information; i.e., sensitivity
10 and importance and the possibility of significant
11 environmental damage be recorded anywhere in the timber
12 management plan?

13 A. Well, the values map and the
14 information that accompanies that will speak to the
15 nature of the value that's to be protected and that's
16 part of the timber management planning process.

17 Q. I recognize that, but this is the
18 first time where I have seen that the sensitivity and
19 importance is specifically noted as something that is
20 going to figure into the process of deciding, in this
21 case, about the area of concern compliance monitoring
22 program, and I am just wondering if that information is
23 going to be recorded anywhere?

24 Now, you have indicated that the values
25 map development is where that information will figure

1 into, but is it actually going to be recorded, will
2 there be a table that says this resource feature which
3 is being protected by an area of concern is very
4 important, is sensitive? Is anything like that
5 planned?

6 A. I wish you had asked Panel 15 that
7 question. I can't answer that. Perhaps someone else
8 on the panel might like to add to that.

9 MR. GORDON: A. Maybe in very general
10 terms I can try and answer it. Obviously when you are
11 going through the planning process and you have
12 identified an area of concern and you are looking at
13 what alternative prescriptions could be considered, you
14 will have to be very aware of the sensitivity of that
15 area of concern to potential activities and you would
16 have to note that in the supplementary documentation.

17 Q. Will it be noted as such or will it
18 simply be implied? I am just trying to get at -- it
19 will be helpful from the perspective of the parties to
20 see that information recorded somewhere when they go to
21 the timber management plan.

22 A. Well, all I can suggest is where an
23 area of concern is considered sensitive and very
24 important, that information would be within the
25 supplementary documentation for the area of concern,

1 but I cannot guarantee that it will be there for every
2 area of concern because it may not be necessary to have
3 sensitivity information there for each area of concern
4 because it is not an issue for all areas of concern.

5 THE CHAIRMAN: Well, Mr. Gordon, where it
6 is an issue, would it not appear as the rationale for
7 the prescription shown?

8 MR. GORDON: Yes, Mr. Chairman.

9 MS. KLEER: Q. Is it at any one point in
10 the planning process that the sensitivity and
11 importance of the resource feature is going to be
12 determined; and, in answering that, who is going to
13 make that determination? I think, Mr. Cary, I would
14 direct this question to you.

15 MR. CARY: A. Well, who is going to make
16 that determination, that would be a planning team task.
17 Your other part of your question was at what point--

18 Q. Yes.

19 A. --would it be written down or would
20 it be...?

21 Q. Will it be determined, that was my
22 question.

23 THE CHAIRMAN: Wouldn't it really depend
24 on at what point the concerns were raised and to what
25 level; in other words, you can even have a planning

1 team going through areas of concern and a further area
2 of concern is not identified until one of the review
3 stages by somebody who is concerned?

4 MR. CARY: Yes, that could happen, Mr.
5 Chairman. I'm just not sure if we -- and I think what
6 you are asking, I am not sure, is: Do we rank these
7 one more sensitive than another; is that what you are
8 trying to get at?

9 MS. KLEER: Q. No, that wasn't what I
10 was trying to get at.

11 MR. CARY: A. Because we don't really do
12 it that way. We want to afford protection, sufficient
13 protection to all areas of concern so they are handled
14 kind of on an individual basis and we know why we are
15 putting whatever we put around that area of concern and
16 there is a rationale for that, for developing that
17 prescription, and the developing of that prescription
18 would implicitly consider the sensitivity of that
19 particular feature.

20 Q. I guess it is the implicitness that
21 bothers me. To make it more explicit I think would be
22 more helpful and, you know, if you were to confirm that
23 where sensitivity and importance was something that
24 could be -- or that was relevant to a particular area
25 of concern, if that were to be included in the

1 rationale for the prescription?

2 A. And I think Mr. Gordon said that if
3 it was particularly sensitive it might appear in the
4 supplementary documentation but, as he said, not in all
5 cases.

6 Q. All right. Let me use as an example
7 a site of cultural significance to a native community.
8 In that instance, will the native community have input
9 into the determination of what the prescription will
10 be, first of all?

11 A. The planning team would -- well,
12 firstly, through the public consultation process it is
13 part of the timber management planning process, input
14 from native communities would be welcome during that
15 process and the planning team would, does and will --
16 and it is normal to listen to the concerns of anybody
17 who is affected by timber management operations.

18 Q. Would the native person or the native
19 community, depending, be able to specify what they
20 would like to see in the prescription?

21 A. Yes.

22 Q. And my final question on this
23 particular matter is: Will the person determining the
24 sensitivity and importance differ from resource feature
25 to resource feature, and I am referring now to within

1 the planning team since that is where the decision is
2 made?

3 A. It would depend. The planning team
4 contains people of various backgrounds and it's a joint
5 effort and each member's input would be considered in
6 their specialty.

7 Q. Okay. I want to turn now to item B,
8 sub (c) also on page 56, where it says the type of
9 technique being applied, a new or proven method and
10 that's one of the factors that's figured into
11 determining frequency, nature and timing. When you say
12 technique or when is written there technique, what
13 exactly do you mean?

14 A. Well, an example of that would be
15 where at a water crossing there is a new type of
16 culvert or a different sort of culvert can be placed at
17 that water crossing or a new type of bridge
18 construction, if it was new you would want to keep your
19 eye on it.

20 Q. But I guess what I am -- the type of
21 technique, what other different types of tech -- I
22 mean, I thought this referred to the type of
23 inspection; am I wrong there?

24 A. You are wrong, yes.

25 Q. Okay. So you are talking about the

1 type of technique used to protect the area of concern?

2 A. Yes, yes.

3 Q. Okay. Again on item A on page 56 at
4 the top, sub (a) the seriousness of deleterious
5 effects. Where will that seriousness of potential
6 deleterious effects be recorded. This is the same sort
7 of question as I asked earlier.

8 A. The area inspection will -- the area
9 inspection report -- sorry, maybe I'm misunderstanding
10 your question. Could you repeat it? Where will...?

11 Q. Where will the seriousness of
12 potential deleterious effects be recorded?

13 A. This is for normal operating areas?

14 Q. Yes.

15 A. And the unit forester will sit down
16 and on an annual basis, as I said in my lead, will
17 consider the potential deleterious effects, and I gave
18 some examples of that on normal operating areas and, in
19 considering those, he will establish his workload for
20 the year, his area inspection workload for the year on
21 those normal operating areas.

22 So it's a factor that he would consider
23 when he develops his annual area inspection workload
24 and that is all I meant.

25 Q. But again it's not something that

1 would be specifically recorded?

2 A. No, no.

3 Q. Okay. If I can turn to page 5 under
4 Methods of Inspection, in sub A it lists on-the-ground
5 inspections by trained MNR staff and one of the types
6 of on-the-ground inspection is cut inspection. What
7 other types of on-the-ground inspections are
8 contemplated by that statement?

9 A. The area inspection program. We
10 visit sites quite often, as I said in my lead evidence,
11 and cut inspections, technical inspections, whether we
12 are administering contracts, we are out there in the
13 field, whether we are conducting stocking surveys,
14 survival assessments, those are on-the-ground
15 inspections.

16 Q. Okay.

17 A. So those are examples of
18 on-the-ground inspections.

19 Q. In sub 3, one of the methods of
20 inspection is contact with other government agencies,
21 members of the public and client groups. Does client
22 group mean the same thing as stakeholders; is that
23 understood, or is there something else meant by that
24 term?

25 A. Stakeholders would be a similar term,

1 but I would just like to point out that in my lead
2 evidence we've had to clarify that particular sub 3.
3 What we meant there, and it's not clear I must admit,
4 is that the public, whether they be client groups,
5 stakeholders can contact us and on the basis of that
6 contact we would conduct an area inspection.

7 But there are really only two forms, the
8 one in sub 1 and sub 2, those are really the methods of
9 inspection. So that wasn't particularly clear and I
10 clarified that in my lead and under cross, that if the
11 public should call us, we will take action and that may
12 involve an area inspection.

13 Q. That was one of my questions later
14 on. Thank you.

15 MRS. KOVEN: Excuse me, Mr. Cary. Take
16 action in terms of responding to a complaint from
17 someone in the public who said please come and look at
18 this?

19 MR. CARY: Yes.

20 MRS. KOVEN: Or verifying what that
21 person was reporting?

22 MR. CARY: Both. We would verify and
23 then -- we would always take some action.

24 MS. KLEER: Q. Would it be in response
25 to every request or would there be some preliminary

1 this is frivolous or vexatious or...

2 A. We take action in every case. What
3 that action would entail would differ.

4 THE CHAIRMAN: Even if the action
5 involved taking no action?

6 MR. CARY: That's true, Mr. Chairman.

7 THE CHAIRMAN: But advising the member of
8 the public that you investigated and you don't think
9 anything is required and, therefore, you are not doing
10 anything?

11 MR. CARY: That's right. It might not
12 entail a field visit, we might be able to solve it in
13 the office.

14 MS. KLEER: Q. Is it the Ministry's
15 intention to contact members of the public who
16 specifically noted a concern that was put into an area
17 of concern that an inspection is going to take place;
18 i.e., will they have some advance notice of that?

19 MR. CARY: A. No, not normally.

20 Q. For the purposes of informing the
21 public, would that not, in your estimation, be a useful
22 step?

23 A. Area inspections are filed after they
24 have been completed at the district office and they are
25 available to the public to have a look at.

1 Q. But they can't see it beforehand.
2 Would it be useful in some instances, if they had been
3 the one identifying the concern, for them to say:
4 Here, I will show you what my concern is, I will come
5 along with you while you are doing your area
6 inspection?

7 A. If the public wanted to accompany us
8 and it did involve a field visit, I'm sure that the
9 local forester would be pleased.

10 Q. But you wouldn't, as a matter of
11 course, notify them prior to doing the area inspection?

12 A. Not, not as a matter of course.

13 THE CHAIRMAN: Well, would the Ministry
14 object to a situation where, if a member of the public
15 wished the Ministry to conduct an area inspection, it
16 had the right to also request the ability to be present
17 when that inspection was carried out?

18 MR. CARY: I would say there would be no
19 problem and we really are -- we would have no problem
20 inviting them along. I don't think they have to
21 reserve the right, so to speak, they would be quite
22 welcome.

23 THE CHAIRMAN: Yes, but the problem is
24 they don't know that one is going to be carried out
25 until after you've done it and filed the report. I

1 think that's what Ms. Kleer is getting at.

2 MR. CARY: But if they call us, right,
3 and say -- you know, and ask us and show particular
4 concern about that area that might affect them, we
5 would make sure that they were informed and if they
6 wanted to accompany us, then that would be fine too.

7 THE CHAIRMAN: Well, I think that is the
8 whole area of the questioning, that if they did this
9 and you thought they were sufficiently interested, you
10 would probably invite them to go along, et cetera, but
11 there is no assurance in any given case that (a) that
12 is going to happen, (b) that they have got notice in
13 fact when the area inspection is going to take place
14 because there is no prior notice required and there is
15 no specific right that the public knows of in the sense
16 that they have a right to request to be in attendance.

17 MR. CARY: You are right, there is no
18 specific right.

19 THE CHAIRMAN: So it really depends on
20 the large 'S' and the disposition of the unit forester
21 in question in a particular unit.

22 MR. CARY: To some extent, but we try to
23 work with our clients and I think we've had some good
24 results and we will continue in that vein.

25 MR. STRAIGHT: Mr. Chairman, my

1 experience in a district in working with that kind of
2 issue is that it tends to be a very informal kind of
3 process anyway and you basically would do what is
4 reasonable under the circumstances, with the intent of
5 providing reasonable client service. If an individual
6 wants to go out and show you something specifically,
7 normally it's not a big deal to arrange that.

8 MS. KLEER: Q. Well, all I'm saying is
9 this is a new process and perhaps in terms and
10 conditions we might want to consider adding that
11 possibility in and making it available to people
12 because not everyone is going to know that they should
13 contact the Ministry.

14 If the Ministry contacted them first and
15 told them they were going to do it, then they might be
16 able to get involved because, as has been made clear,
17 they are not going to get any advance notice that it's
18 going to take place, it could happen at any time.

19 MR. STRAIGHT: A. I think we are
20 intending to formalize this into something more than
21 what it's expected to be. It becomes -- when you are
22 dealing with members of the public reasonableness is
23 something that becomes an issue.

24 Quite often members of the public don't
25 have the same necessary flexibility to be able to

1 direct their workday to be out at sites specifically
2 when you need to be there.

3 Q. That may be, but if you don't afford
4 them that opportunity then they don't even have the
5 opportunity.

6 A. The only qualifications I make is
7 that when you try to start to formalize the process you
8 are starting to get into a very difficult area to try
9 and come up with the exact qualifications or the exact
10 way in which you would word that particular inspection
11 or commitment.

12 Q. All right. Let's go to after the
13 inspection. After the inspection has occurred, is
14 there any notification process to notify the person who
15 identified the area of concern that that area of
16 concern has been identified, or has been inspected
17 rather?

18 MR. CARY: A. There is no process, but
19 if a member of the public has initiated an area
20 inspection then normally we would get back to that
21 member of the public and notify him that his concern or
22 her concern was either warranted and we are taking
23 action or there was -- or in fact the reserve was in
24 tact or whatever.

25 THE CHAIRMAN: Would you object to any

1 requirement to do so?

2 MR. CARY: Yes, I think it would add
3 another layer of reporting that we would have trouble
4 with. It's --

5 THE CHAIRMAN: Well, if you are going to
6 do it in any event, where is the trouble?

7 MR. CARY: But it gets into doing it
8 every time then. But certainly in exceptional
9 circumstances we do that, Mr. Jeffery, but it's
10 getting, as Mr. Straight said, into trying to handle
11 everything and handle --

12 THE CHAIRMAN: Well, isn't that the
13 concern though of the public to some extent, that there
14 are all these sort of requirements unwritten, rules
15 unwritten and services that the Ministry is going to
16 perform, and probably - and I'm not suggesting they
17 don't - does perform in most instances, but people are
18 inately suspicious and they are worried about the
19 instance where the Ministry isn't going to tell them
20 how their concern was addressed.

21 MR. CARY: I am sorry, did you say is or
22 isn't going to tell them? What did you say, sir, I am
23 sorry?

24 THE CHAIRMAN: I don't know, I forgot.

25 MS. KLEER: I think he said isn't.

1 THE CHAIRMAN: Is not going to tell them.

2 MR. CARY: Is not.

3 THE CHAIRMAN: That is what they are
4 concerned about, about the few instances where maybe
5 the Ministry either forgets or doesn't get back to
6 them, et cetera, and they have no way of knowing how
7 their concern was addressed unless, of course...

8 MR. CARY: They have just got to call.

9 THE CHAIRMAN: Well unless, of course,
10 they have to take the initiative and go after the
11 Ministry to follow through, et cetera.

12 MR. CARY: It's just a phone call and
13 it's --

14 MS. KLEER: But if they don't know
15 that -- see, you are looking at two different or we are
16 looking at two different instances. You say: Well, if
17 they call we will contact them, but not in every case;
18 it is not going to be the situation that they call, in
19 many instances you do your area inspection but they
20 have no notice that you are going to do that.

21 So how can they possibly call you to ask
22 for the results of something they don't know happened?

23 MR. STRAIGHT: A. Excuse me, Mr.
24 Chairman. I believe this was part of my lead evidence
25 when I dealt with the whole area of stakeholder

1 feedback and what I tried to suggest was that we were
2 responding to the public in kind. If they wrote us a
3 letter, we would normally write a letter back; if it
4 was in informal concern it was raised at the local
5 hockey rink watching the kids play hockey, you may get
6 back to them the next time there was a hockey game.
7 It's not a formal process.

8 I guess the trouble I have, and I'm not
9 trying to suggest we don't want to be responsive and
10 responsible to the public, but it's if you tie that
11 kind of commitment to the fact that the public has to
12 go and inspect a particular concern with the Ministry,
13 then the Ministry all of a sudden is under the
14 obligation to make sure that a member of the public
15 gets out there, and I'm not sure how you draw that fine
16 line.

17 THE CHAIRMAN: That wasn't the
18 suggestion, though. The suggestion was they don't have
19 to attend, you can do the inspection without them, but
20 they have got the opportunity and right to attend if
21 they so wish.

22 MR. STRAIGHT: Okay, that makes it clear.

23 THE CHAIRMAN: And that was a different
24 question.

25 MR. MARTEL: How frequently are your area

1 inspections going to occur? I mean, will there be a
2 pattern to them in terms of at a certain time of year
3 or when something arises do you go out. You say you
4 can't formalize them because of the way the area
5 inspections are going to occur or -- what will make it
6 so difficult?

7 MR. CARY: Well, you have an idea where
8 your cutting is going to occur, where your operations
9 are going to occur during that year and they will occur
10 throughout the year, so there will be a continual area
11 inspection workload.

12 And, as I said in my lead, there will --
13 there could be four area inspections on one water
14 crossing. Which do you pick, so to speak?

15 There is a continual area inspection
16 workload, more than one on one site. We are out there
17 all the time conducting technical surveys, technical
18 inspections and area inspections. It would be
19 difficult to structure it that easily.

20 MS. KLEER: Q. I'm not talking about
21 every area inspection, I'm talking about area
22 inspections for areas of concern.

23 MR. CARY: A. Well, I was talking about
24 that too.

25 Q. All right. You are talking about

1 technical inspections applying to those as well?

2 A. Talking about area inspections, you
3 may go out and do an area inspection and a technical
4 inspection. There are all sorts of ways that you try
5 and be efficient, but if we talk about areas of concern
6 and I think that is what you are interested in, as I
7 said there are - we operate near a lot of areas of
8 concern each year and we may conduct more than one area
9 inspection on an area of concern.

10 Q. All right. Would it make some sense
11 to you then if a person had identified an area of
12 concern, you had done or completed an area inspection,
13 you completed the area inspection report, would it make
14 some sense to send to the person who had identified the
15 area of concern a copy of the area inspection report?

16 A. If that person requested a copy we
17 might send it to him or to her. They are available in
18 the district office.

19 Q. That may be, but persons who are far
20 distant from the district office aren't going to be
21 able to just pop in to the office and check?

22 A. In those circumstances --

23 THE CHAIRMAN: The point is that if you
24 are going to do it in any event -- like, all somebody
25 has to do is identify themselves, tell the Ministry

1 that they are concerned about something and say: And I
2 would like to know about the results of any area
3 inspection that you conduct. And you say that triggers
4 automatically your response at the end which says: We
5 will send them a copy of the report because they have
6 requested it.

7 Well, if you are going to do that in any
8 event and you are going to file a copy of the thing in
9 the district office, why not just send a copy of the
10 report to the person that identified the concern.

11 And then you have fulfilled two things:
12 You have indicated to them clearly - whether or not
13 they have even asked for it - that you have dealt with
14 their concern in some way, you then have indicated to
15 them clearly that if there is some further concern
16 about the way you have dealt with it, they would have
17 the further option of pursuing it by recontacting the
18 Ministry and say: I looked at your report and you seem
19 to have ignored what I really was concerned about, or
20 handled it in such away that I find unsatisfactory and
21 pursue it from there.

22 And then you are really addressing
23 concerns as opposed to addressing them and the person
24 then has to take all these extra steps to find out what
25 happened. They have obviously felt concerned enough in

1 the first place to bring it to your attention or else
2 you never would have found out in the first place what
3 the concern was, so why not complete the process by
4 just sending out a copy of the report since, in most
5 cases, you are going to do it anyways; instead of
6 reserving to yourself the right that we will, if they
7 request it and, if they don't request it, we probably
8 won't and in some cases we might anyways.

9 MR. GORDON: Maybe I can make a couple of
10 comments. No. 1, in ten years in the field we have
11 never had -- we don't get this type of request, it's
12 not normal; and No. 2, and recognizing that -- and
13 recognizing that, if it becomes automatic that we send
14 them out when we have finished them and realizing we'll
15 be doing hundreds of these each year what it does is it
16 becomes another workload.

17 MR. MARTEL: Wait a minute, wait a
18 minute. You just said you hardly got a complaint
19 though, so that in fact --

20 MR. GORDON: No, no, we don't normally
21 get requests for the results of our cut inspections or
22 area inspections, people just don't ask for them.

23 MR. MARTEL: But the question is: How
24 frequently do people contact you to do these sorts of
25 things, to identify an area of concern or something

1 like? How frequently would it be required of you to
2 automatically, after you have done your inspections, to
3 simply send them a copy? Are we talking about a great
4 frequency, does it occur daily in every unit across the
5 province or what?

6 MR. GORDON: Well, it will be
7 happening -- these area inspections will be taking
8 place in every unit across the province.

9 MR. MARTIN: Right.

10 MR. GORDON: And there will probably be
11 in the order of hundreds of them every year.

12 MR. MARTEL: We are only talking about
13 those where people have asked for input, we are not
14 talking about every area inspection somebody is sending
15 out to some anonymous person a copy of a report, we are
16 only talking about where some one has had some input.

17 MR. GORDON: I suppose then the way you
18 would do that, if someone specifically has been
19 involved in the area planning process and they have
20 specifically requested that when you carry out an area
21 inspection that they receive the information as to the
22 results, then we can do that. That's all we are
23 talking about.

24 THE CHAIRMAN: No, and we are saying
25 where somebody has specifically identified an area of

1 concern to the Ministry - it's not one you have
2 identified on your own or through our normal
3 consultation - it's where somebody has picked up the
4 phone or walked into an office and said I have got a
5 concern, and you respond by conducting an area
6 inspection, and all we are saying is: Why not, in
7 those specific cases, automatically send out a copy of
8 the report, not all the other ones?

9 MR. CARY: Oh yes, yes.

10 MR. GORDON: We agree.

11 MR. CARY: Oh yes, sorry. We are talking
12 at cross purposes here. I am sorry, yes. In that case
13 absolutely, yes.

14 THE CHAIRMAN: And that wouldn't be a
15 difficult and onerous task for the Ministry?

16 MR. CARY: No, no.

17 THE CHAIRMAN: Because there can't be
18 that many of them across the province being identified
19 specifically by individuals or groups.

20 MR. CARY: Yes. No, in that case, yes,
21 we would get back to that person who was concerned, we
22 would get back to them with a completed area inspection
23 report.

24 THE CHAIRMAN: And we are just saying you
25 wouldn't have any difficulty of that being a

1 requirement as opposed to you doing it because you want
2 to do it.

3 MR. CARY: No, we have no difficulty with
4 that.

5 MS. KLEER: Q. okay. Let me just go to
6 one other area we may have some confusion here too as
7 well. When I was talking about the area of concern
8 identification I was also referring to the initial
9 process where the values map is put together, where the
10 timber management plan is being prepared. Now, in that
11 instance, that is not somebody calling into the office
12 in the course of the timber management plan.

13 MR. CARY: A. That is where we were at
14 cross purposes, I believe.

15 MS. KLEER: And you weren't addressing
16 your questions to that issue, I take it?

17 THE CHAIRMAN: Not specifically, but
18 obviously where the values map was put together in the
19 first place, that is a specific concern of a specific
20 person in many instances, although it may be something
21 that the Ministry knows about from its internal files,
22 et cetera, that it puts the value up on the map, but
23 you are talking about the ones where somebody walks
24 into an open house and says: I have got a concern, put
25 this up on the values map.

1 MS. KLEER: That's right.

2 THE CHAIRMAN: Or even prior to that?

3 MS. KLEER: Yes.

4 Q. So what we are dealing with then is
5 two things; where either they identify it in the course
6 of the timber management plan or at the initial point
7 where you are doing your values mapping and somebody
8 comes into the public house and identifies it there..
9 So in either case.

10 MR. CARY: A. If somebody comes into a
11 an information centre or public meeting and identifies,
12 that becomes an area of concern and then the planning
13 team looks at it.

14 Q. I recognize that, but then the
15 question is: When you do the area inspection for that
16 area of concern, will that also be an instance in which
17 you would agree it would be reasonable to send a copy
18 of the area inspection report, in addition to when
19 during the course of the five years of the life of the
20 timber management plan someone comes in and says: I
21 have got a concern here, will you go out and inspect
22 it.

23 A. I don't think that that would be
24 unreasonable. It would be a tough one to handle in
25 terms of workload for -- well, what I'm trying to say

1 is that we are getting bogged down with paperwork.

2 THE CHAIRMAN: Where is the extra
3 workload other than mailing it out? You are doing the
4 report anyways, presumably, you are doing the
5 inspections presumably anyway.

6 MR. CARY: Well, we have to track. We
7 have to track right from six years before. For
8 example, if we only get to that area of concern at year
9 five of the plan, we have got to track this thing for
10 six years.

11 THE CHAIRMAN: As to who identified it?

12 MR. CARY: Yeah, sure, and the address
13 and all that stuff. It becomes onerous to track it.
14 And if their address changes, but it really becomes a
15 heavy load.

16 MR. MARTEL: Well, why would you have to
17 repeatedly send it out?

18 MR. CARY: No, you only send it out once.

19 MR. MARTEL: Well, that's the point I'm
20 making then. Why would you track after that?

21 MR. CARY: Because you may not come to
22 that area of concern until year five of the plan.

23 MR. MARTEL: Right.

24 MR. CARY: And you have got to remember
25 who during the year before, say six years before it was

1 operated, identified that area of concern and then
2 track it all the way through and get back to that
3 person when the area was operated.

4 MR. MARTEL: But couldn't that come out
5 in the annual work schedule that you are going to
6 operate in a specific area, you have identified your
7 area of concern on your values map right at the
8 beginning, and it's only year five that you are going
9 to come to this specific location, you have annual work
10 schedule. Why would you want to track it -- once you
11 have identified it, put it on a values map, why would
12 you have to do anything with it until the time you then
13 are going to do the annual work schedule with the
14 prescription that is around it?

15 MR. CARY: It's just a matter of
16 keeping --

17 MR. MARTEL: Well, if the person is
18 concerned they are going to keep it before you.

19 MR. CARY: Well, that is what we hope
20 too.

21 MR. MARTEL: It's only in them knowing
22 that it's going to get a response whenever you get to
23 that point in time that, in fact, the public will take
24 and become interested and involved. If they think they
25 are getting short shrift, sure, but I don't think they

1 want to hear from you every year or they want to know
2 anything any year until the actual event is going to
3 occur.

4 MS. KLEER: Q. And if I might add,
5 wouldn't it make some sense then, to deal with your
6 tracking problem, if you document in the original
7 documentation who identified the area of concern and
8 their address you have got that documentation, it's up
9 front when you identified -- or when you put together
10 the timber management plan. To me that doesn't seem to
11 be a particularly onerous documentation requirement.
12 Would you agree with me?

13 MR. CARY: A. Well, yes, it appears so
14 on the surface and so you would have their name and
15 address and AOC number and then you would have to make
16 sure that prior to operating around that area of
17 concern you contacted the person or whatever -- or sent
18 them a copy of the area inspection report.

19 It is in fact when you are dealing with a
20 lot of areas of concern, it may indeed become an
21 onerous addition to the present management planning
22 workload and, as I say, it's just another piece of
23 paper maybe, but it's going to require a system to
24 track that.

25 Q. Well, all I'm suggesting is that it's

1 an important piece of paper to the person who gets it?

2 A. Yes.

3 Q. And it might be worth it to them.

4 A. (nodding affirmatively)

5 MRS. KOVEN: Excuse me. I wouldn't think
6 that one area inspection report would satisfy someone
7 for the sorts of problems they would have for an area
8 of concern.

9 For example, if they were worried about,
10 I don't know, an eroding culvert on a stream crossing,
11 well you would have to look at the spring flow, you
12 would have to look at the winter flow, the summer flow,
13 it might take you a couple of years to sort out what to
14 do with that noone is interested in knowing that you
15 are going going out and you saw it one time. I mean,
16 there would have to be follow up.

17 MR. CARY: Well, the example I gave in
18 the evidence where you came back to the same water
19 crossing seven times or was it four times, I forget,
20 it's which area inspection do you send out to the
21 public, do you send all seven.

22 In that particular instance your memory
23 is absolutely right, you will be coming back to that
24 same area a year after it's been completed. So it may
25 well be a rather complicated --

1 MRS. KOVEN: The person with the
2 complaints wants to know that it was taken care of.

3 MR. CARY: Yes.

4 MRS. KOVEN: they will want that final
5 inspection report I would think, as well as the first
6 one.

7 THE CHAIRMAN: You see the problem you
8 are running into, Mr. Cary, is you want to lend some
9 credibility to the monitoring process, to the whole
10 process of saying to the public at large: Look, we are
11 going to deal with concerns and we are going to deal
12 with them appropriately; and so you set up the whole
13 management process to take care of that, except it
14 seems to the Board to be made somewhat difficult for
15 the public who identified it in the first place to sort
16 of get the last chapter, what happened.

17 And all we are trying to explore is how
18 can this be sort of an automatic thing if they
19 identified it so that they are assured for whatever
20 reason that the Ministry has taken action, and if they
21 don't agree with the action taken, they can then pursue
22 other remedies.

23 That is the only -- I think that is why
24 we are all bogged down on that kind of thing.

25 MR. CARY: And it's how to do that.

1 THE CHAIRMAN: That's right.

2 MR. CARY: Because the public have access
3 to the report of past forest operations which contains
4 Table 4.12.X that registers compliance or not, they
5 have the area inspection reports and they can call us.

6 And so there is that window there that is
7 open and it's again this formalization of sending bits
8 of paper out that is going to become a workload and a
9 tracking problem for us.

10 THE CHAIRMAN: It's a workload but you
11 are a public agency.

12 MR. CARY: Yes, yes.

13 THE CHAIRMAN: And what I'm saying is
14 where do you draw the line in where the public has to
15 get up from the comfort of their houses and drive miles
16 into a district office and dig through--

17 MR. CARY: And look at a map or
18 something.

19 THE CHAIRMAN: --to find something as
20 opposed to knowing that this service has on their
21 behalf through a public agency been performed and
22 here's the answer and lo and behold it shows up in
23 their mailbox.

24 Now, you know, those are the two
25 extremes. I'm not saying they can't get the

1 information, we are not saying that, you know, they
2 haven't got redress once they get the information; it's
3 just: How do you make it convenient so that the public
4 feels that their concerns not only have been addressed
5 but the information is provided to them for which they
6 might even argue ultimately in the long run, they are
7 paying for it through their taxes.

8 MS. MURPHY: If I can just make a
9 suggestion here. I think the panel has heard a number
10 of concerns here that perhaps may have different levels
11 of detail involved, and perhaps rather than carry on at
12 this stage, if they had the opportunity to consider
13 that and perhaps come back with something.

14 THE CHAIRMAN: Right.

15 MS. MURPHY: Because given the level of
16 this discussion, I don't know that they can help you
17 any further at this time.

18 THE CHAIRMAN: All right. The Board is
19 not trying to create an onerous multi-leveled burden
20 for the Ministry but, by the same token, I think the
21 Board feels that the public deserves a method to be
22 chosen which will not inconvenience them unduly so that
23 they can be assured that their concerns are in fact
24 addressed.

25 And it's up to you I think the Ministry

1 or perhaps some of the other parties in their own case
2 to suggest what a feasible reporting system would look
3 like without the Board in the abstract trying to impose
4 terms and conditions which may in fact turn out to be
5 onerous or may in fact not serve the vast majority of
6 the people that maybe don't care.

7 Somewhere in there we have to find a
8 happy medium, and perhaps you could look at that at
9 some point.

10 MR. CARY: Yes, we will, Mr. Chairman.

11 MS. KLEER: Q. And in fact maybe one of
12 the best places to look at that is prior to getting to
13 the negotiation process on terms and conditions.

14 MR. CARY: Good. Fine..

15 Q. All right. Let's go on to Table
16 36 -- or the table at pages 36 and 37 which is the area
17 of concern monitoring report contained in the report of
18 past forest operations.

19 Q. I may not have to go through all of
20 this given the previous discussion, but I take it that
21 this table isn't contemplated as including with the
22 area inspection reports, that will not of course be
23 attached as an appendix?

24 A. No, but they will form the basis for
25 completing this table.

1 Q. Is this table in its final form;
2 i.e., do you intend to include any other information in
3 this table or not?

4 A. It's not in final form, but it's not
5 going to change in substance.

6 Q. Okay. Would it not make some sense
7 if we don't have some resolution of getting area
8 inspection reports out prior to receiving this report
9 of past forest operations, to include something
10 relating to when the compliance monitoring was done?
11 There is no indication on this table as to when it
12 occurred. Would that be useful information?

13 A. Well, when it's occurred would be on
14 the area inspection report.

15 Q. That's right, but I'm talking about
16 like a date?

17 A. Yeah. I think the table would
18 become -- it's a summary table and I think we want to
19 keep it as a summary table. The background information
20 is there, but we don't want to make this table too
21 elaborate. We could add all sorts of things I suppose
22 but we want to keep it as a summary table.

23 Q. What would you see then -- I have
24 another series of questions but I'm not going to ask.
25 How would this table be particularly useful to a member

1 of the public who is looking at it in the five year
2 review period?

3 I guess what I'm getting at is something
4 that says compliance assessment: Yes, doesn't tell the
5 member of the public a whole lot and it doesn't give
6 them an opportunity to question whether or not
7 compliance in fact was what they saw as happening,
8 especially if they have identified the area of concern?

9 A. Well, that yes means that the
10 prescription that was on that particular areas of
11 concern was met fully and completely. That is what yes
12 means.

13 Q. I recognize that and all I'm saying
14 is that a member of the public might say: Well, that
15 is what you the Ministry has said and we would like to
16 see a little bit more information before we agree with
17 you.

18 A. And the public then would be given
19 access to the area inspection, maybe more than one,
20 that was particularly -- was done on that particular
21 area of concern, and that is how we would verify that
22 yes, if the public was interested, we would show them
23 the information.

24 Q. Okay. I would like now to turn to
25 the question or the areas of penalties for

1 non-compliance with area of concern prescriptions.

2 And again I think, Mr. Cary, you would be
3 the one best suited to answer this. Does the Crown
4 Timber Act or the proposed amendments to it or any
5 pieces of legislation that have been identified in this
6 panel create the possibility for penalty for an
7 infraction of an area of concern where that infraction
8 does not involve timber cutting or a water crossing or
9 some infraction involved with a water crossing?

10 A. Where it does not involve timber
11 cutting?

12 Q. Or a water crossing; i.e. --

13 A. The Public Lands Act is the one that
14 springs to mind.

15 Q. And what does that address?

16 A. The use of public lands. If there
17 has been some removal of material or some action that
18 is contrary to the Public Lands Act, then there may be
19 action taken under the Public Lands Act.

20 THE CHAIRMAN: Wouldn't there also be the
21 possibility of penalties under some of the
22 environmental legislation?

23 MR. CARY: Yes, there would, sir.

24 MS. KLEER: Q. Okay. What would be the
25 penalty if the prescription for a spirit site that was

1 of significance to a native community was not followed;
2 i.e., there was cutting in an area where there was not
3 to be cutting?

4 A. That would be an unauthorized cut
5 under the Crown Timber Act. If that area was reserved
6 from cutting, then it would be unauthorized cutting
7 under the Crown Timber Act.

8 Q. And the nature of the penalty then is
9 a monetary fine?

10 A. At the moment a penalty is assessed
11 and that assessment is based on the value of the wood
12 that was cut. In future we hope that instead of the --
13 it will change from penalty assessment to fines in the
14 provincial offences court or Provincial Court and it
15 will be based on the severity of the infraction rather
16 than the value of the wood. So the proposed changes
17 alter that particular part.

18 Q. I understand too that part of the
19 penalty for such a non-compliance would be or could
20 include rather remedial action. Could you indicate to
21 me what type of remedial action would be considered
22 suitable for a spirit site for unauthorized cutting in
23 a spirit site?

24 A. Well, I don't know. Gosh! Remedial
25 action. I don't know what is particularly important

1 and, I am sorry, I'm ignorant, I don't know what is
2 particularly important in a spirit site, so I can't
3 answer that question. I don't know if anybody else
4 can.

5 THE CHAIRMAN: Wouldn't that be up to the
6 court, if the statute permitted, an assessment of a
7 fine and/or anything else the court might deem just or
8 some of those catchall phrases they use in some of
9 those statutes; I mean, it would more or less be up to
10 the court as to what type of remedial action was
11 appropriate.

12 MS. KLEER: That's true and I suppose
13 if --

14 THE CHAIRMAN: And I suppose the
15 infringed group--

16 MS. KLEER: Party could could make some
17 suggestions.

18 THE CHAIRMAN: --would make suggestions
19 as to what they would feel would be the proper remedy.
20 It might be replanting, it might be -- I don't know, it
21 could be anything, it's hard to say. I think it's
22 unfair to ask the Ministry what the remedial action
23 should be.

24 MS. KLEER: Okay.

25 Q. Would you agree with me that even

1 given the proposed amendments to the Crown Timber Act,
2 that a fine per se would not compensate a native person
3 or native community whose interest in a particular
4 spirit site had been infringed because of cutting in
5 the area of concern?

6 What I'm getting at is: Does a fine
7 serve as compensation for the native person or the
8 native community?

9 MR. CASSIDY: I don't know how he could
10 answer that question.

11 MS. MURPHY: The fine in the criminal
12 context is not meant to be compensation at all.

13 MS. KLEER: That is what I'm getting at.

14 Q. Is there any intention of the
15 Ministry of Natural Resources to further amend the
16 Crown Timber Act - and you may not be able to answer
17 this - to put in place some sort of compensatory scheme
18 for parties who had areas of concern which were
19 infringed upon?

20 MR. CARY: A. I'm not aware of any such
21 proposal at this time.

22 THE CHAIRMAN: What do you mean
23 compensatory; punishing the person and putting them in
24 jail or what?

25 MS. KLEER: No, I'm talking about

1 something along the lines of victim compensation in the
2 criminal context being applied to this context. I'm
3 just asking whether or not that is something that the
4 Ministry has in mind.

5 MR. CARY: I'm not aware of that.

6 MS. KLEER: Q. Okay. I have a few
7 questions on operational audits and, for that purpose,
8 I will look at term and condition 56 and I will just
9 read the first paragraph:

10 "MNR shall undertake operational audits
11 which will include an assessment of
12 compliance with the timber management
13 planning process, approved timber
14 management plans, implementation
15 manuals and..." and I focus on this:
16 "... provincial policies, procedures and
17 legislation."

18 And I'm going to specifically ask you a
19 few questions about provincial policy.

20 Is it intended that the operational audit
21 will monitor compliance with provincial policies
22 relating to native peoples that were introduced in Mel
23 Crystal's evidence in Panel 6, and I'm going to refer
24 to specifically to those policies. And I don't know if
25 you have a copy of Panel 6 in front of you. You don't?

1 MR. CARY: A. No, I don't. And, Ms.
2 Kleer, I talked about timber management operational
3 audits and the answer to your question is: We do not
4 monitor conformance with provincial policies of the
5 nature that you are describing in the timber management
6 operational audits. We monitor compliance with
7 plans -- with timber management plans and if, for
8 example, there are guidelines in place, then we
9 consider it in the development of the plan and it
10 results in a prescription, we make sure that that
11 prescription is adhered, not only in operational audits
12 but in all sorts of other ways too.

13 So not in operational audits in the
14 timber management program.

15 Q. Can you indicate -- I'm just going to
16 point to each specific policy and if you can indicate
17 to me then where that is monitored, since... Okay.
18 The first of those -- and it may be simple enough for
19 me just to read them to you.

20 I will be referring to page 176 in Panel
21 6 and I will just read the paragraph, and this deals
22 with tradition and subsistence harvesting practices:

23 "In respect of the regulation of wildlife
24 under provincial legislation, MNR takes
25 the position that are while the resources

1 of Ontario belong to all of the people of
2 Ontario and will be administered in the
3 best interests of all of the people of
4 Ontario, MNR recognizes obligations under
5 Indian treaties and in allocating such
6 resource gives primary consideration to
7 subsistence use by native people."

8 MS. MURPHY: I don't think they can
9 follow that at all, whether he can respond to the
10 question at all, I'm not sure, but I don't think he can
11 follow it.

12 MS. KLEER: Q. I'm referring to hte
13 bottom paragraph on 176. What I'm specifically
14 referring to is 'giving primary consideration to
15 subsistence use by native people". How is that policy
16 monitored or compliance with that policy monitored?

17 MR. STRAIGHT: A. Ms. Kleer, I'm perhaps
18 somewhat more familiar with that area than Mr. Cary is
19 and I think one of the issues that Mr. Cary is
20 struggling with is he's trying to see how any of these
21 policies have been suggested -- how it has been
22 suggested by any of the evidence that we have given
23 where any of these policies are actually manifest or
24 delivered in timber management plans, and I think that
25 is the problem.

1 That is not the process that we have put
2 here before the Board. So unless you can be very
3 explicit or clear in terms of what policy it is that
4 you would expect to be delivered in the timber
5 management plan, it's very difficult to answer your
6 question. At least from an audit perspective.

7 MR. CARY: A. Because audits are
8 compliance monitoring. And so my question is
9 compliance with what? And so Mr. Straight is right, if
10 it's guidelines, we do monitor that.

11 Q. Well, I guess what I'm saying is that
12 in some instances in a timber management plan where the
13 management unit were close to a native community or a
14 native reserve, that might be an instance in which
15 subsistence use was being affected by the operations
16 going on in that timber management plan.

17 MR. STRAIGHT: A. And what Mr. Cary is
18 suggesting is, is if that was raised as a particular
19 resource issue -- resource value issue and there was a
20 specific prescription put in place in the timber
21 management plan, then whether or not that prescription
22 was complied with would be addressed in Mr. Cary's
23 compliance monitoring program.

24 And to that degree you are right, but we
25 don't, in terms of auditing our timber management

1 planning process, look to whether or not we are
2 delivering any kind of a native policy. We would do
3 that through a separate audit process. We may do that
4 with the Indian Affairs Directorate or Ministry of
5 Northern Development and Mines or some other ministry
6 as well who were trying to deliver a government policy
7 respecting native people.

8 Q. All right. So you have answered my
9 question. Basically there is no specific point in
10 any - and help me here if I'm right or not - in any of
11 the monitoring programs with respect to timber
12 management that will deal with this particular policy,
13 or that will audit compliance with that particular
14 policy?

15 THE CHAIRMAN: Unless there has been a
16 specific prescription in a timber management plan.

17 MR. CARY: Yes, unless the implications
18 of that policy have been translated into a timber
19 management plan and then indeed, yes. But only if that
20 has happened.

21 MS. KLEER: Q. All right. Let's go on
22 to another policy that is referred to at page 177.
23 This is in the middle paragraph or the third paragraph
24 rather:

25 "The particular defineable concerns of

1 specific communities can be identified
2 and addressed at the local level. For
3 this reason the policy of consultation in
4 this undertaking focuses on band
5 councils and native communities
6 potentially affected."

7 Now, the next sentence:

8 "The timber management planning process
9 described in the Class EA Document
10 requires that specific notice of each
11 step in the process be provided to band
12 councils and other native communities."

13 Is that last sentence of that paragraph
14 the way in which the policy expressed in the prior
15 sentence is intended to be complied with?

16 MR. CARY: A. You're talking about the
17 policy of consultation?

18 Q. Yes?

19 A. Yes.

20 Q. All right. Now, on page 179 at the
21 last paragraph dealing with land base it states in the
22 last sentence:

23 "MNR and the Province of Ontario are
24 committed to effective consultation with
25 Indian bands concerning resource

1 development on land adjacent to Indian
2 reserves where such development has the
3 potential for significant impact on the
4 band. "

5 And again, can you answer for me where,
6 if at all, in the compliance -- or in monitoring for
7 timber management planning that that particular policy
8 is addressed?

9 A. Well, this sentence speaks to
10 resource development which is more than timber. So
11 confining my remarks to timber again, we believe that
12 we do consult and we do indeed consult with Indian
13 bands concerning the development of timber management
14 plans.

15 So that is where -- that's how we consult
16 in the development of the plans and we monitor the
17 plans.

18 Q. Let's go on to page 452 and 453 of
19 the witness statement and that is Table 3, the witness
20 statement from Panel 16. I will address my questions
21 to you, Dr. Euler and Mr. Straight, and whichever one
22 of you decides is best to answer it, please answer it.

23 The first two questions just deal with
24 looking at the table itself. Would you agree that one
25 of the mechanisms for prevention and mitigation are

1 listed for native communities, and I'm specifically
2 referring to managing fish and wildlife populations,
3 does not appear as a mechanism for prevention or
4 mitigation with respect to local communities as found
5 on the following page?

6 MR. STRAIGHT: A. If you notice on the
7 following page local communities, I believe you will
8 see that in that last column on page 453 in the last
9 column it reads effects/effectiveness monitoring does
10 refer to provincial parks, wildlife, fish management
11 program.

12 Q. Okay. That is a program. Is that
13 different from --

14 A. The same reference is to --

15 Q. Hold on, we might be confused here.
16 I'm looking at the column that says mechanism to
17 prevent, minimize, mitigate adverse effects.

18 A. Okay.

19 THE CHAIRMAN: It's the last bullet;
20 isn't it?

21 MS. KLEER: That's right.

22 THE CHAIRMAN: That doesn't appear on the
23 next page.

24 MS. KLEER: Yes.

25 MR. STRAIGHT: Yes, you are right. There

1 is that -- is in that particular heading which says
2 mechanism to prevent, minimize or mitigate you don't
3 see that particular reference.

4 MS. KLEER: Q. Okay. And also looking
5 at the effects/effectiveness monitoring column, again
6 for the native communities we see two bullets; i.e.,
7 wildlife population monitoring and developing deer and
8 cultural heritage guidelines and monitoring programs.

9 Those two bullets do not appear with
10 respect to local communities; is that correct?

11 MR. STRAIGHT: A. That's correct.

12 Q. Now, I take it that that was
13 intentional, leaving those out?

14 A. One of the difficulties in drawing up
15 that table, which was expressed in the statement of
16 evidence itself, was that quite often many of those
17 mechanisms to prevent and as well the effects and
18 effectiveness monitoring programs do become
19 interchangeable between those groups, and recognizing
20 and those kinds of constraints though, I think what we
21 did try to do was to focus on what might be some very
22 real and specific concerns of stakeholder groups
23 wherever we could.

24 I think all you can interpret from what
25 you see there is, is that we do recognize a special

1 interest from native communities and heritage values
2 and because of their dependency on the natural resource
3 base in terms of hunting, trapping and fishing we do
4 recognize that management of fish and wildlife
5 populations was very specific to those groups.

6 I don't think we want to infer from that
7 though that local communities may not share those same
8 values, it's just that we were -- do you put everything
9 everywhere. And so at the risk of generalization, we
10 probably may have created some unnecessary expectations
11 or conclusions.

12 Q. Would you agree with me that there
13 are local wildlife and fish populations effects on
14 native communities that result from timber management
15 that require that monitoring be done at a native
16 community level?

17 A. In general I -- well, I don't know if
18 I can agree with that statement. I don't know why I
19 would necessarily see any effects occurring at that
20 level that would be any different from any of the
21 effects occurring anywhere else in the undertaking that
22 would suggest a specific need to do something different
23 than we are doing in our overall monitoring program.

24 Q. But you just said that native
25 population -- or native communities have a special

1 interest in those matters; i.e., wildlife and in
2 heritage resources?

3 A. Right, but I don't want you to infer
4 from what is on that table that local communities also
5 don't share those values and those importances.

6 If you looked at the proportion, for
7 example, of trappers in a native community you would
8 probably find it higher than what you would do in what
9 we have referred to as a local community, and that
10 really is about all you can interpret from that table.

11 Those values would be equally shared by a
12 great many people, as indeed native communities can be
13 members of most of the stakeholder groups there from
14 tourist operators to commercial fishermen to a local
15 angler and hunter.

16 Q. So in essence you disagree with my
17 suggestion?

18 A. I said that I didn't see where there
19 would be any unique set of circumstances surrounding
20 native communities that would -- rather, in terms of
21 environmental effect on fish and wildlife populations
22 that would suggest that we need to adopt a different
23 approach than what we are doing in our overall design
24 of the monitoring program.

25 Q. And, Dr. Euler, would you agree with

1 that assessment?

2 DR. EULER: A. I don't know for sure
3 what you mean by native community level.

4 Q. Well, I guess I'm getting at, if a
5 particular native community was close to an area where
6 timber management operations were ongoing and they made
7 specific use of particular wildlife populations and
8 they had heritage values that were in the area, would
9 it not be part of the MNR's program to monitor at a
10 local level; i.e., but specifically at that native
11 community level, the effects of timber management on
12 those resources that were used by the native community?

13 A. I really don't know what to -- how to
14 answer that. Is a native community -- would it cover
15 like quite a few square miles, because the area, the
16 size of the area is very important.

17 For example, if it did cover quite a few
18 square miles, then the answer is we probably should be
19 involved in some kind of monitoring. But if it was a
20 really small area, then perhaps not.

21 And my knowledge of native communities is
22 incomplete but my of understanding is sometimes they
23 are quite extensive in terms of area.

24 MR. STRAIGHT: A. Could I just get
25 clarification as well, Ms. Kleer. Are you also

1 suggesting that there should be something over and
2 above what you have seen in evidence in terms of the
3 local effects and effectiveness monitoring?

4 Q. Well --

5 A. That was how I had interpreted what
6 you had asked of me.

7 Q. Well, I guess what I'm looking at is
8 there is and item there that says -- for effects/
9 effectiveness monitoring for native communities it
10 shows wildlife population monitoring, and I was trying
11 to get to that being something which is not covered for
12 local communities, and I wondered why that was, if that
13 was evidence of the fact that MNR intended to do that
14 kind of monitoring where a native community was
15 concerned rather than a "local community"?

16 A. Again, I think that is more a case of
17 generalization in the table. In terms of wildlife
18 population monitoring, it generally referred to the
19 wildlife population monitoring program that Dr. Euler
20 led into evidence and, again, I don't think you can
21 interpret that local communities aren't also interested
22 in wildlife in general and in the development of that
23 program.

24 And perhaps Dr. Euler can clarify that,
25 if it's an issue, but the development of that program

1 will be looking at -- both collecting the species of
2 wildlife that should be monitored as well as looking at
3 the methods by which that information can be delivered.
4 That may or may not include either districts and local
5 stakeholder groups gathering specific information which
6 can being aggregated at the provincial level.

7 Q. Do you have anything to add, Dr.
8 Euler? You look puzzled.

9 DR. EULER: A. I'm really sorry that I
10 can't be more helpful here and I don't quite know how
11 to be more helpful.

12 There are cases where local monitoring is
13 going to be important, sure, and then there are other
14 cases where it may not be as important. Sometimes it's
15 going to involve native communities and sometimes not
16 and it's really hard to give you the generalization I
17 think that you are seeking, and I am sorry.

18 Q. Okay. I have a question. If you had
19 identified -- or if a native community had identified
20 as an area of concern a particular area which they used
21 for subsistence harvest, would that be something which
22 would then become the subject or be considered to
23 affect a decision as to whether or not local monitoring
24 of populations was going to occur?

25 A. Yes, yes, that's -- clearly.

1 Q. Okay, thank you.

2 THE CHAIRMAN: Ms. Kleer, can you give us
3 an indication of whereabouts you are in your
4 examination?

5 MS. KLEER: I probably have about an hour
6 and a half to go.

7 THE CHAIRMAN: An hour and a half. Well,
8 perhaps we will take a break at this time.

9 MS. KLEER: It makes sense.

10 THE CHAIRMAN: 20 minutes.

11 ---Recess taken at 3:00 p.m.

12 ---On resuming at 3:25 p.m.

13 THE CHAIRMAN: Thank you. Please be
14 seated.

15 MS. KLEER: Q. Okay. I am not certain
16 who it was that prepared the answer to the FFT
17 Interrogatory No. 49 and that's contained in Exhibit
18 928A. It is just a very brief question.

19 That answer contains a list of special
20 studies that were prepared or that have been done by
21 the MNR and I think it was a number of current
22 examples.

23 Now, I have reviewed that list and I
24 haven't seen in that list any reference to studies
25 relating to native communities and I am just seeking

1 confirmation as to whether or not there are any other
2 studies that might relate to native communities;
3 special studies, that is?

4 MR. STRAIGHT: A. Ms. Kleer, I did most
5 of the research, if you will, into that particular
6 question and there were really -- those are probably
7 not an inclusive list of all of the types of studies
8 that may be going on. That's probably -- there
9 probably are some other examples out there which
10 weren't included.

11 Q. Okay. To your knowledge, has the
12 Ministry ever done any special studies specifically on
13 this topic which is timber management effects on native
14 communities, use of fisheries and wildlife, or a
15 particular native community?

16 A. Native communities and use of fish
17 and wildlife?

18 Q. Their particular use of fish and
19 wildlife as that is impacted by or affected by timber
20 management?

21 A. Yes, there have been studies in
22 general about native use of fish and wildlife, yes.

23 Q. But as that is affected by timber
24 management?

25 A. I think -- I guess two things. In

1 general I would say that quite often any effect that
2 may be experienced by native communities would be
3 similar in many cases to other stakeholders as well who
4 have similar interests in resources. So I would hope
5 that a study, for example, that assessed the effect of
6 timber harvesting on pine marten would be of equal
7 interest whether you were a native or a non-native
8 person.

9 I mean, can we agree that basically
10 studies on resources and resource management issues in
11 general for which natives have an interest would
12 certainly be of concern and of interest to them?

13 Q. Well, what I am specifically asking
14 is, with respect to a native community - and just
15 please answer me yes or no if you are aware of that -
16 whether or not that kind of a study has been done, or
17 has it simply been done at the level of a general study
18 on a particular species that may be harvested by any
19 number of people and the types of them?

20 A. Okay. And be very specific in the
21 question you are going to ask me. I'm sorry, I am not
22 trying to be difficult, but --

23 Q. All right. The question is: Has MNR
24 ever done any studies specifically on timber management
25 as it affects the native community or native

1 communities' use of fisheries and/or wildlife?

2 A. Not that I am specifically aware of.

3 Q. Now, again, I'm not sure who gave the
4 evidence any more on the tourism guidelines monitoring
5 program, but I have a question related to that. Is
6 that Dr. --

7 A. I provided the lead evidence on that,
8 Ms. Kleer.

9 Q. Mr. Straight. I noted that in that
10 study one of the purposes of the study or one of the
11 intents of the study was to get information on remote
12 tourism operations, some background evidence, against
13 which to compare results where tourism was affected by
14 timber management; is that --

15 A. Some of the cases that would be
16 investigated would be remote tourism.

17 Q. And was the purpose of doing that to
18 gain background information against which to test the
19 results of timber management on communities -- sorry,
20 or on tourism operations that were affected by or were
21 impacted by timber management?

22 A. The results of the study, to try and
23 summarize basically the lead evidence again, would be
24 essentially to apply tourism guidelines to a number of
25 types of tourist operations and assess what changes

1 occurred in business performance of those tourist
2 operations which may have been a result of the
3 guidelines not being effective or, contrarily, which
4 could have demonstrated indeed that the guidelines were
5 effective.

6 So it is tracking a set of business
7 indicators and as well as tracking a set of features
8 important to the tourist experience over the same time
9 period to assess the degree to which we are effective
10 in protecting those particular -- that particular
11 tourist value.

12 Q. I might have misunderstood the
13 evidence when I read it. Are you using, as part of
14 your study, any tourism operations -- remote tourism
15 operations outside the area of the undertaking as
16 controls; is that what --

17 A. We will be establishing a set of
18 controls which would be tourist operations that we
19 believed were not being affected by timber management
20 operations.

21 Q. Okay. And that would serve as
22 background information against which --

23 A. That's right, to compare the results
24 of the actual study et cet.

25 Q. Okay. As a proposition then, would

1 it make some sense for the purposes of identifying
2 impacts of timber management on native communities to
3 design the same sort of program; i.e., where you would
4 look at remote communities, remote native communities
5 that were not affected by timber management or not
6 perceived to be affected by timber management and to
7 gain that background database?

8 A. I guess it comes down -- if you
9 wanted to do that, I guess that is a potential study
10 mechanism, if indeed that was an objective you wanted
11 to achieve.

12 Going back in terms of looking at the
13 evidence that we have put into the hearings, and I
14 think we have generally -- it is the Ministry's general
15 position that we have not seen where there are adverse
16 affects from timber management to this -- on native
17 communities in general.

18 So that's one of the reasons why we
19 specifically haven't developed, for example, provincial
20 guidelines to deal with that in timber management and,
21 similarly, one of the reasons why at this point in time
22 we haven't developed a monitoring program specifically
23 to deal with native communities.

24 We feel that their interests in resources
25 basically which may be at -- for which timber

1 management might have some potential effect can be
2 dealt with very well in the provincial monitoring
3 program, in the monitoring program overall that has
4 been designed.

5 Q. Okay. With that I would like to turn
6 now to the effects/effectiveness monitoring program and
7 when I reviewed the transcripts on Panel 8 I understood
8 that Dr. McNamee might be available. But he is not
9 available, he is in Viet Nam, that's what I last heard;
10 is that correct?

11 MS. MURPHY: He's been around.

12 MS. KLEER: Okay.

13 Q. Well, I hope that someone on the
14 panel is familiar with Panel 8 and I am going to ask
15 Dr. Euler, have you reviewed Panel 8?

16 DR. EULER: A. Yes, I have read at least
17 some of it.

18 Q. Okay.

19 A. I'm not sure I have read every single
20 word.

21 Q. All right. Have you reviewed the
22 cross-examination of Mr. Hunter of Dr. McNamee?

23 A. Some of it, yes, I have.

24 Q. Okay.

25 A. But it also has been some time.

1 Q. All right. Well, I will ask the
2 questions and see what happens.

3 A. All right.

4 Q. Do you agree with me that the ESSA
5 exercise didn't look at native resource harvesting
6 issues, that wasn't one of the intents of the ESSA
7 exercise?

8 A. Yes, I agree with you.

9 Q. And do you agree that ESSA did not
10 address how changes in moose numbers could affect the
11 native harvest?

12 A. Yes.

13 Q. All right. Now, in reviewing all of
14 the evidence in Panel 16 and all the prior evidence
15 that I have reviewed I don't see any indication that
16 MNR intends to study that linkage, and is that still
17 the case; does MNR intend to not deal with that issue?

18 A. The linkage between...?

19 Q. Moose numbers.

20 A. Moose numbers, yes.

21 Q. And effects of moose numbers and
22 changes of moose numbers that are affected by timber
23 management on native communities.

24 A. Well, no, I don't think that will be
25 the direct object of a study, I don't think so, not at

1 this time.

2 See, partly that comes from the fact that
3 native people have certain rights that are enshrined in
4 treaties and they have, for example, first access to
5 that moose herd and that's all -- everything they do is
6 taken right off the top.

7 So, you know, we are more concerned with
8 the other parts of the program I think than that
9 particular one.

10 Q. Is part of the reason perhaps - and
11 you can confirm this - that that study or that linkage
12 is not intended to be done is that because it is
13 assumed that if the provincial population of moose is
14 all right and meets the objectives, then at the local
15 level you are not going to have a problem as well?

16 A. Yes. Basically that there will be
17 adequate numbers of moose for native peoples, yes.

18 Q. Okay. Taking that point then that
19 there would be adequate numbers for native peoples, has
20 that particular assumption - and I am putting this
21 forward, it may not be an assumption - has that ever
22 been tested, has that ever been verified, that there
23 are sufficient numbers for native peoples in any study
24 that has been done by MNR?

25 A. No, not that I know of.

1 THE CHAIRMAN: Are you aware, Dr. Euler,
2 from your own knowledge or within the Ministry of any
3 deficiencies in terms of the numbers available for
4 native people?

5 DR. EULER: No, I'm unaware of any
6 deficiencies in that context.

7 MS. KLEER: Q. But no studies have been
8 done?

9 DR. EULER: A. Not to my knowledge.

10 Q. Has the MNR ever specifically set out
11 to determine whether those deficiencies or whether any
12 such deficiencies do exist?

13 What I am trying to say is that that may
14 be -- you haven't learned of any deficiencies, but have
15 you ever specifically asked that question?

16 A. Of native people?

17 Q. Yes.

18 A. Not to my knowledge, no.

19 THE CHAIRMAN: Will you be leading
20 evidence to that effect?

21 MS. KLEER: We will be leading some
22 evidence, yes.

23 Q. So just to clarify then, we know -
24 and you can confirm this if this is true or not - that
25 there were tests that had been done in other instances;

1 i.e., Dr. McNamee gave evidence about the native
2 harvesting issue that was dealt with in the context of
3 the Arctic Oil and Gas Transport Program?

4 A. Mm-hmm.

5 Q. Would you agree with me that that
6 kind of study could be done in Ontario and related to
7 timber management?

8 A. Yes, that can be done.

9 Q. Okay. I may be asking the same
10 question again, but can you explain to me why MNR has
11 not deemed it necessary to do that in this instance?

12 A. Well, because moose populations are
13 generally increasing as a result of the various
14 management programs that have been in place, and the
15 perception is that as long as those moose populations
16 are increasing and doing well that native communities
17 are able to use them and in some reasonable way, and it
18 has never been brought to your attention as a
19 particularly difficult problem, and so with short
20 resources and so on we have put our money into other
21 areas, trying to go after the problems that have
22 appeared to us to be more significant.

23 DR. MacLEAN: A. Perhaps I can just
24 interject. I guess for both -- for moose resources the
25 anticipated effect of timber management on moose is a

1 positive, that's what we anticipate will happen. So we
2 see benefits from the guidelines in terms of moose
3 populations and those benefits would be translated in
4 terms of moose available to native communities.

5 On the fisheries side, we would see no
6 negative effects on fish population as a result
7 application of those guidelines, so we would see no
8 change as a result of the timber management planning
9 process.

10 We would not target the link between
11 those resources and native communities as an area for
12 study unless we were wrong in our assumptions, unless
13 we were having negative effects on those resources as a
14 result of timber management planning.

15 Q. Which is something that presumably
16 the effectiveness monitoring program is designed to
17 look at?

18 A. That's correct.

19 Q. Okay. Dr. MacLean, I have a few
20 questions for you. In your direct examination you had
21 indicated that effectiveness monitoring will not only
22 deal with guidelines but will also address what you
23 called other sets of directives, and I am trying to get
24 clarification as to what you mean by other sets of
25 directives?

1 A. If we turn to Table 1 on page 438 and
2 look at resource protection guidelines, the fifth
3 column, you notice mentioned under that column a number
4 of other directives applying to the aquatic
5 environment, stream fish, spawning of egg stages. The
6 study -- what I intended to suggest was that the study
7 would provide some evaluation of those other
8 directives. The total list of the directives is at the
9 bottom of Table 1 on page 442 of the evidence.

10 Q. Is that the extent of it or is there
11 anything else contemplated?

12 A. I think in the other tables you will
13 notice some other directives mentioned for both
14 terrestrial and socio-economic.

15 Q. Okay. So the intent then is to
16 monitor all of those in all three tables?

17 A. All of those that are mentioned.

18 Q. Yes, thank you. Okay, I have a
19 series of questions about stakeholder committees and I
20 am not certain again, I think it is Mr. Straight who
21 has dealt with this issue.

22 MR. STRAIGHT: A. Depending on the
23 nature of it. Mr. Gordon led evidence on the
24 stakeholder's committee.

25 Q. Okay. I will be referring to a

1 number of exhibits at this point and I will just
2 indicate what they are. Exhibit 916, specifically the
3 last page which is a breakdown of the steering
4 committee, planning committee, stakeholder committee
5 and technical committees; also, Exhibit 937 which is
6 the letter that was sent out to seek participation on
7 the stakeholder committees; and also Exhibit 925 which
8 contains Interrogatory No. 9 by NAN.

9 First then looking at Exhibit 937 which
10 is the letter to the stakeholder committees, can
11 someone just confirm for me that that letter was sent
12 to, among other parties, the Chiefs of Ontario?

13 MR. GORDON: A. Yes, it was.

14 Q. Do the Chiefs, to your knowledge,
15 represent bands that are outside the area of the
16 undertaking?

17 A. I really can't comment on that. We
18 were looking to have the native peoples represented by
19 one person on the stakeholder committee, and what I did
20 was I approached Mr. Crystal from Panel 6 and asked for
21 his advice as to what organization we should send the
22 letter to and he recommended that if we were sending a
23 letter out to one organization that, in his estimation,
24 the most appropriate organization would be the Chiefs
25 of Ontario. And then we cc'd it to a number of other

1 native groups as you I think have noted.

2 Q. Does anyone on the panel know
3 anything more about the Chiefs of Ontario than Mr.
4 Gordon would know about the nature of that
5 organization?

6 (no response)

7 All right. Then I won't ask any
8 questions about it, barring one. Would you have any
9 notion of what kind of resources are available to the
10 Chiefs of Ontario to participate in this kind of an
11 exercise?

12 A. No, I would not.

13 Q. Would you confirm whether or not the
14 Chiefs of Ontario had any involvement in the hearing to
15 date?

16 A. I believe they have not as an
17 organization.

18 THE CHAIRMAN: Is that affiliated with
19 the Union of Ontario Indians?

20 MS. KLEER: Not to my knowledge. I don't
21 feel like I should give evidence, I mean there is --

22 THE CHAIRMAN: Well, no, I am asking for
23 a factual answer to a factual question. The reason I
24 am asking that is because you are aware there is a
25 member of the Board who is the environmental director

1 of the Union of Ontario Indians, who is a part-time
2 member. I don't know if you are aware.

3 MS. KLEER: Well, I know they are
4 certainly not the same organization.

5 THE CHAIRMAN: All right. The only
6 reason I am getting into this at all is, if you are
7 talking about what their participation is in this
8 process, in this hearing, we would be first and
9 foremost probably declaring a conflict of interest if
10 it involved the EAB Board member.

11 MS. MURPHY: As I understand it, there is
12 no connection between the two organizations. Just
13 another point, the Chiefs of Ontario were involved in
14 presubmission consultation on this environmental
15 assessment. As to the first question, there is no
16 connection between the two.

17 THE CHAIRMAN: Thank you.

18 MS. KLEER: I guess just for your --
19 sorry.

20 ---Discussion off the record

21 MS. KLEER: Just for your understanding,
22 the reason that we were asking these questions was to
23 get at the issue of whether or not the Chiefs were
24 actually a body that could participate in this kind of
25 a process.

1 Q. Mr. Gordon, is it true then that the
2 reason that NAN and Treaty 3 were not asked to
3 participate in this process directly was because you
4 wanted to seek one body to represent all the native
5 people?

6 MR. GORDON: A. That's correct.

7 Q. Okay. I would like to look briefly
8 at what the procedural nature of how these stakeholder
9 committees function. Okay.

10 Can I just have a breakdown of what
11 precisely the role of the stakeholder committee is, and
12 I have here in Exhibit 925 in answer to Interrogatory
13 No. 9 a list of committee responsibilities and perhaps
14 in responding to that question you could refer to that
15 table.

16 A. Okay, I have it.

17 Q. Maybe what we can do, I will first
18 ask you: Is this the only document that sets out what
19 the responsibilities of the stakeholder committee will
20 be?

21 A. It's MNR's best estimate of what the
22 stakeholders -- the stakeholder committee's
23 responsibilities will be. It is our intent to have
24 that committee meet as soon as we have all the members
25 finalized and we are hoping that will happen before

1 Christmas.

2 And one of the things that obviously
3 would happen in the first meeting would be to have them
4 review their responsibilities or terms of reference,
5 provide advice, make comments, and then we go from
6 there. And we very clearly recognize that it is an
7 evolving process and so these responsibilities are not
8 necessarily etched in stone.

9 Q. So then, is this the terms of
10 reference that you are referring to when you talk about
11 terms of reference?

12 A. That's right. That's correct.

13 Q. So at this point you cannot give an
14 indication, given that all the parties have not
15 responded, as to whether or not the stakeholders would
16 actually agree to the list of responsibilities that are
17 indicated here?

18 A. We have had -- I think we sent out
19 seven letters and I think six of the groups have
20 responded and said they will participate, and when we
21 sent out the letter we included the committee
22 responsibilities with it and so far they have not made
23 any comment on those responsibilities that were
24 provided in the letter. However, that does not
25 necessarily mean that they won't be commenting in a

1 meeting.

2 Q. All right. I am going to ask a few
3 questions about how MNR perceives the stakeholder
4 committee as functioning. Will the stakeholder
5 committee -- sorry, will the information that is put
6 before a stakeholder committee be privileged or will it
7 be something that can be brought back to the parties
8 that they represent?

9 A. They can be brought back to the
10 parties that they represent.

11 Q. Is it the understanding that there
12 will be a voting procedure, minutes, a chairman; is
13 that something in the books?

14 A. What you have got to recognize - and
15 I am not trying to slow you down at all - this will be
16 an evolving process.

17 I am going to be recommending that they
18 allow me to be their secretary and I would recommend
19 that perhaps they elect a chairman and a
20 vice-chairperson and we will just have to see what they
21 want to do.

22 And if they want me to take minutes, then ..
23 I will be taking minutes; and if they don't want me
24 there, then I will go somewhere else and someone else
25 will take minutes. They will have to decide how they

1 want to work and we will try to provide advice to them
2 where possible.

3 Q. Is it as a bottom line intended to be
4 a consensus approach or is there a possibility for some
5 other type of approach?

6 A. To be real candid, I don't know how
7 this is going to work. You know, there is the
8 possibility that six of the parties that hopefully will
9 be represented in the committee can agree and then
10 another party may not, and depending on the issue they
11 may provide advice to the steering committee and note
12 that one of the party doesn't agree, and then the
13 steering committee proceeds, or the steering committee
14 may consider the concern of that one party great enough
15 that they would have to look at it again. It's really
16 hard to say that this will happen for sure in this way.

17 Q. So at this point, if a potential
18 stakeholder didn't know how it was going to function,
19 is it fair to say that they might not want to
20 participate because they felt that the process that was
21 eventually developed was something that they couldn't
22 live with; is that a possibility?

23 A. I suppose they could think that way.
24 I would hope though that if they were thinking that way
25 they would let us know and, as well, they would at

1 least be coming to the first meeting to find out if
2 their supposition that the way it was going to work was
3 not necessarily the way they thought best, they would
4 at least confirm that.

5 Q. Okay. Turning then to the first
6 table that appears in Interrogatory No. 9 put forward
7 by NAN. I am just trying to explore the relationships
8 between the various committees. If the stakeholder
9 committee didn't agree with what the planning committee
10 was doing, would they have any recourse or how would
11 that operate?

12 A. Yes. Both the planning committee and
13 the stakeholder committee report to the steering
14 committee and if there is a definite disagreement, they
15 cannot agree, then it would be up to the steering
16 committee to make a decision.

17 Q. Now, I note that on the steering
18 committee there appears MNDM. Can you explain to me
19 why MNDM was included in the steering committee?

20 A. I believe the reason is, and I can't
21 remember exactly when this took place, but we -- and I
22 was not directly involved, but MNR went forward with I
23 believe a Cabinet submission looking for support in
24 principle for the provincial effects/effectiveness
25 monitoring program and out of that submission we were

1 advised that MNDM should be involved. And so that's
2 the way we are involving them.

3 Q. Are you aware of whether or not ONNAD
4 was contacted?

5 A. I'm not aware.

6 Q. And the same question applies to
7 INAC. Would you be aware whether they were contacted?

8 A. The second one, I don't even know
9 what it is.

10 Q. Well, INAC is the federal Indian and
11 Northern Affairs.

12 MR. STRAIGHT: A. I believe that title
13 is Indian and Northern Affairs Canada, INAC.

14 Q. Yes.

15 MR. GORDON: A. I can't comment as to
16 whether or not they were approached or not.

17 Q. Well, given that one of the proposed
18 stakeholders is a native peoples rep, would there be in
19 your opinion some worth to having at least the
20 provincial representative of the native peoples on that
21 steering committee?

22 A. It would be something that we could
23 consider. Perhaps a more appropriate place may be to
24 have a representative in the planning committee, sort
25 of at the working committee level, but that's only a

1 suggestion on my part.

2 Q. But I take it from your suggestion
3 that at this point even this table is not etched in
4 stone; i.e., the nature of the committees?

5 A. No, it's -- no.

6 Q. Okay. I note that in the list of
7 committee responsibilities, as it presently stands, one
8 of them or one of the responsibilities for a
9 stakeholder committee would be to participate in the
10 evaluation and communication of project results.

11 Would that participation mean that the
12 Ministry of Natural Resources as the ultimate decider
13 in this exercise would not have a similar
14 responsibility to communicate with the parties who are
15 being represented, or is it intended that the
16 stakeholder will be the sole conduit to its represented
17 body?

18 A. I think if you look a little closer
19 you will see that in the planning committee, the
20 stakeholder committee and the project/technical
21 committees that there are words -- similar words in all
22 those three different types of committees.

23 Q. So somehow it is going to get to the
24 people who are going to be affected by the guidelines,
25 that's --

1 A. Oh definitely.

2 Q. And the sole responsibility will not
3 rest with the representative?

4 A. That's right.

5 Q. The way it is set up right now, is it
6 intended that whatever body is representing or is
7 represented on the stakeholder committee will act in a
8 representational capacity; i.e., as a political body
9 representing the body that they generally represent or
10 they are solely as technical representatives to provide
11 technical expertise?

12 A. Within the stakeholder committee, I
13 suppose in the terms you are using they would be there
14 to represent the organization that they come forward
15 from. As far as technical advice to study design, et
16 cetera, that would be taken care of through the members
17 of the technical committees that are specific for each
18 project area.

19 Just for your information, we are also
20 intending, besides involving the stakeholder committee
21 members in the development of project, we hope to be
22 having some workshops where, for example, if we do have
23 a representative from the Chiefs of Ontario and that's
24 acceptable to everyone, that would be the native
25 peoples representative, you know, there would still be

1 the opportunity through workshops for groups such as
2 NAN and Treaty 3 to participate in workshops where a
3 broader cross-section of stakeholders would be asked to
4 participate.

5 Q. I guess part of the problem then that
6 I see is that - and you may not be aware of this - but
7 if the Chiefs act by resolution and they receive a
8 majority -- or they operate on the basis of a majority
9 vote, in some instances NAN and Treaty 3 might disagree
10 with what the Chiefs' resolution is in which case they
11 couldn't act in a representational capacity.

12 So I am concerned then that if they were
13 to expect to act in that way they might not be able to.

14 A. Right, okay. In very simple terms,
15 the ultimate objective besides learning, doing a lot of
16 learning through all these committees and carrying out
17 studies is -- and where it is necessary to modify and
18 improve our provincial guidelines, before we recommend
19 any changes to the provincial guidelines, we will be
20 canvassing all sorts of organizations beyond those
21 listed in the stakeholder committee and those
22 organizations will include NAN and Treaty 3.

23 So if the representative -- let's assume
24 perhaps the Chiefs of Ontario do participate and you
25 lose the vote, we will still be approaching you through

1 another mechanism before we amend the guidelines so
2 that you will be able to have your voice that way.

3 Q. So, in other words, I think what I am
4 hearing is that that stakeholder representative need
5 not necessarily, in the case of the Chiefs, be expected
6 to represent NAN and Treaty 3?

7 A. I really can't say who they are going
8 to represent or not represent. I really can't comment
9 on that.

10 Q. A question about providing advice and
11 recommendations to the steering committee. Would one
12 of those recommendations -- types of recommendations
13 include recommendations for changes to the guidelines?

14 A. Yes.

15 Q. Now, I note in the second point under
16 the committee responsibilities for the stakeholder
17 committee that they are to participate in study design
18 relative to the individual stakeholder's area of
19 expertise. What precisely do you see as the Chiefs of
20 Ontario's expertise in this exercise?

21 A. The intent of those words at the time
22 that it was written was very specific and there was the
23 possibility that one of the stakeholder committee
24 members might have specific expertise in a certain
25 area, and so when we were proceeding with a study

1 design and setting up the technical committees which
2 would provide advice on the study design, that
3 individual who had specific expertise in a certain area
4 would automatically be able to participate in the
5 appropriate technical committee. That's what the
6 intent of those words were.

7 Q. So, in other words, what you are
8 saying is that on the technical committee it could be
9 expected that some of the stakeholder representatives
10 on the stakeholder committee might also participate in
11 the technical committee?

12 A. That's correct, or what also might
13 happen is there may be technical experts within one of
14 the stakeholders' organizations that they would
15 recommend be a participant in the technical committee
16 and that advice would be listened to.

17 Q. At this point, has there been any
18 discussion as to the technical committee make-up for
19 each of the different projects?

20 A. I haven't been directly involved, but
21 I know there has been some thinking going on relative
22 to, for example, the moose technical committee.

23 What we are hoping -- we've had one
24 meeting of the planning committee - and I'm now
25 forgetting when that was, it was some time in October,

1 late October, I believe - and we had the scientists
2 there for the moose project and the aquatics project
3 and what we asked them to do was go away and come up
4 with a tentative list of people who could be considered
5 for the technical committee.

6 And one of the things we wanted to do as
7 early in the process as possible, before the technical
8 committee was finalized, was take those lists of
9 tentative technical committee members to the
10 stakeholder committee and have their advice on
11 membership.

12 Q. Just to go back briefly to the area
13 of expertise. Was it ever intended when you wrote up
14 the list of committee responsibilities for stakeholder
15 committees that the Chiefs of Ontario would provide a
16 specific area of expertise?

17 A. It was never directly intended that
18 that be the case. It could be the case, but we weren't
19 specifically looking for something.

20 Q. I guess what my concern is that in
21 the ESSA exercise, which dealt with the same set of
22 guidelines that are being monitored by this process, it
23 was considered that the native people did not need to
24 be represented in the ESSA exercise because they lacked
25 technical expertise required for that process, but they

1 are being involved here and I'm not certain why that
2 is. I want to make sure whether there has not been
3 some confusion, there is certainly some confusion in my
4 mind at this point.

5 A. Okay. The only comment I can make is
6 I can't really comment on why they were left out of the
7 ESSA exercise, okay, I was not privy to that. But I do
8 believe it is appropriate that they do participate in
9 this exercise and we are looking for their involvement.

10 Q. Okay. If you can specifically direct
11 me, what do you see as being the benefit of native
12 representation with respect to these three sets of
13 guidelines, the moose guidelines?

14 A. I won't be able to be that specific.
15 First of all, I'm not sure if you are aware that at
16 this point in time we are talking not about three
17 projects, but five projects, that in my lead evidence
18 there was an update and we included a population
19 monitoring project.

20 All I can suggest is, you know, timber
21 management to a large degree takes place in northern
22 Ontario and the areas that we are studying, the topics
23 of interest we believe have a high interest for the
24 native peoples and, therefore, we would like them to
25 participate.

1 Q. If it were the case that --

2 THE CHAIRMAN: Do you suggest, Ms. Kleer,
3 that if they weren't asked to participate there would
4 be a problem?

5 MS. KLEER: Sorry, could you repeat your
6 question?

7 THE CHAIRMAN: Would your clients be
8 taking objection if they were not asked to participate?

9 MS. KLEER: At this stage I am really not
10 prepared to give an answer to that because we have to
11 talk to our clients yet about that.

12 Q. You have indicated, Mr. Gordon, that
13 you see it important that the native people be
14 represented on this committee. I would like to get a
15 little bit of clarification from you as to why they
16 should be represented here, what they would gain from
17 it?

18 THE CHAIRMAN: Well --

19 MS. MURPHY: With respect, there was an
20 answer to that very question, Mr. Chairman.

21 THE CHAIRMAN: Ms. Kleer, as the Board
22 understands the answer given, the Ministry feels that
23 the activities impact people in the north and your
24 clients make up a portion of those people of the north
25 and, therefore, they would probably be interested in

1 participating. That may not be the case, but that's
2 probably the motivation why they were asked to
3 participate.

4 MS. KLEER: Q. Would part of the
5 stakeholder's role include something that's not
6 indicated here, and you can just indicate whether MNR
7 would approve this, identifying effects that were not
8 previously identified in the ESSA exercise?

9 MR. GORDON: A. I suppose it would.
10 Perhaps Dr. MacLean could make a comment on that. I'm
11 not the scientist, but the door is wide open, I
12 suppose.

13 Q. Dr. MacLean looks a bit surprised.

14 DR. MacLEAN: A. I would imagine that
15 they would bring forward potential effects that hadn't
16 been considered.

17 Q. So, in other words, the 36 potential
18 effects that were identified the ESSA exercise are not
19 the end result; in other words, there can be expansion
20 beyond those effects?

21 A. I think the intent of the ESSA
22 exercise was to consider all effects on those resource
23 values. If the participants in the ESSA exercise were
24 wrong and didn't identify them, we would like to know
25 about it.

1 Q. And did that also extend to the
2 assessment of significance or non-significance that was
3 achieved in the ESSA exercise; i.e., would they be in
4 this exercise reassessing assessments of significance
5 that were made in the ESSA exercise?

6 A. It's likely that we continue through
7 at least the aquatic and moose program, continue to
8 look at models, continue to go through the same
9 exercise as we went through during the ESSA exercise
10 through the workshops that Mr. Gordon has discussed and
11 I would imagine that significance would be an ongoing
12 discussion.

13 Q. Mr. Gordon, at this point you may not
14 be able to answer this because I recognize that it is
15 an evolving process, but at this stage is it your
16 understanding that within the stakeholder committee, if
17 there were a disagreement by one of the representatives
18 on that committee as to what was being recommended to
19 the steering committee, what kind of, if any, recourse
20 would there be for that party who disagreed with the
21 recommendation?

22 MR. GORDON: A. No. 1, they could make a
23 minority report to the steering committee; No. 2,
24 outside of this committee structure there are other
25 avenues available for someone making their opinion

1 known. They may want to go directly to the Deputy, I
2 hope they don't have to and, as well, there is a high
3 probability that the stakeholder committee will be
4 interacting at certain times directly with the planning
5 committee and so, therefore, the planning committee
6 will be aware of differences of opinion and they may
7 develop a position and bring that forward to the
8 steering committee that recognizes that difference of
9 opinion and, as well, if I am allowed to be the
10 secretary for the stakeholder committee--

11 Q. Why would you want to do that?

12 A. --I will be doing what I feel is
13 necessary to make the appropriate people aware of
14 differences of opinion in the appropriate matter.

15 Q. Okay, one final question. When the
16 word recommendation is used here, is that meant to be
17 what it suggests; i.e., is it a recommendation only and
18 not something that would have binding effect upon a
19 steering committee, and I am specifically thinking in
20 the context of changes to guidelines?

21 A. That would be the proper
22 interpretation at this time. Whether it is the
23 planning committee on its own or the stakeholder
24 committee on its own making a recommendation, or
25 whether it's those two committees jointly making a

1 recommendation to the steering committee for a change
2 in guidelines, it is up to the steering committee as to
3 whether or not they proceed beyond that.

4 THE CHAIRMAN: Well, isn't it a
5 recommendation all the way up to when the guideline,
6 whether it's Ministry or provincial, is ultimately
7 approved?

8 MR. GORDON: That's correct.

9 THE CHAIRMAN: Somebody has the ultimate
10 authority for saying: This is it?

11 MR. GORDON: And we call him the Deputy.

12 THE CHAIRMAN: Okay.

13 MS. KLEER: Okay. I have no further
14 questions. Thank you.

15 THE CHAIRMAN: Thank you.

16 Well, ladies and gentlemen, we have
17 reached the stage of the day that we are about to
18 embark on the further discussions on counsels'
19 relationship with the media, followed by the scoping
20 for Panel 17.

21 The Board wishes to advise that counsel
22 for Treaty No. 3 has indicated that he has decided not
23 to cross-examine Panel 16, therefore, we would expect
24 to commence first thing in the morning, Ms. Seaborn,
25 with the Ministry's cross-examination, followed by, if

1 necessary, a short break and the Ministry's
2 re-examination.

3 MS. MURPHY: That's fine.

4 THE CHAIRMAN: I assume from your
5 previous estimates that it looks very much like the
6 conclusion of this panel will take place tomorrow and,
7 therefore, we will probably adjourn tomorrow and
8 reconvene for Dean Baskerville's evidence next Monday.
9 There doesn't appear to be much point in trying to
10 start Panel 17.

11 We haven't reached the scoping exercise
12 yet; and, secondly, I would assume the witnesses are
13 unavailable in any event, so we would be sitting here
14 by ourselves. We shall choose instead to leave
15 tomorrow.

16 Mr. Hanna, are you ready to commence with
17 your submissions on that issue?

18 MR. TWORZYANSKI: Could the panel step
19 down, Mr. Chairman?

20 THE CHAIRMAN: Yes, please do.

21 MR. TWORZYANSKI: Thank you.

22 ---(Panel withdraws)

23 MS. MURPHY: Mr. Chairman, when I made
24 submissions on this matter I promised to provide to the
25 Board and the other parties copies of Rule 11 of the

1 Code of Practice and that is entitled: The Lawyer and
2 the Administration of Justice. If I could I would just
3 provide that to you now.

4 THE CHAIRMAN: Very well.

5 MS. MURPHY: (handed)

6 THE CHAIRMAN: Thank you. Am I correct,
7 counsel, in assuming that the excerpts from these rules
8 are taken from the July, I believe, 1989 version of the
9 Code of Practice; is that correct?

10 MS. MURPHY: I believe that they are.
11 They are from the most recent version that's available
12 from the Law Society. We can check the date for you if
13 you wish.

14 THE CHAIRMAN: Very well.

15 Mr. Hanna?

16 MR. HANNA: Mr. Chairman, I intend to be
17 quite brief.

18 I have reviewed Ms. Cronk's submission
19 and the submission by other counsel, any associated
20 documents and articles that have been distributed, and
21 I have discussed this with my client. We've given
22 considerable consideration to the matters that have
23 been brought before the Board.

24 In arriving at our submission we have
25 considered, first of all, the existing measures to

1 direct conduct of counsel and agents before the Board
2 in other tribunals of this nature. We have also
3 considered the conduct of counsel and agents to date in
4 the hearings, in this particular hearing, and we've
5 also looked at the potential impact on public
6 dissemination of the issues being discussed at this
7 hearing that could result from a decision by the Board.

8 And in dealing with each one of those we
9 have come to the following observations: First of all,
10 it is our view that there are a number of measures
11 currently available to direct the conduct of counsel
12 and agents before this Board and those are both the
13 Codes of Practice that you well aware of and excerpts
14 of which have been made available to you, there are
15 also, of course, the laws of the land that we are
16 familiar with in terms of libel and slander and
17 whatever other types of prejudicial statements that
18 might be made.

19 Also, in terms of the actual conduct of
20 counsel at the hearing, it is our view that having
21 looked at the articles - and I realize those articles
22 per se are not up for discussion - but we have looked
23 at the articles that led to this issue being brought
24 before the Board and --

25 THE CHAIRMAN: Well, I don't think we

1 want to get into any of that.

2 MR. HANNA: Okay.

3 THE CHAIRMAN: The idea for this
4 discussion is, is that the Board was not going to be
5 placed in the position of entertaining submissions on
6 those particular articles nor ruling on their propriety
7 in any way.

8 MR. HANNA: Without referring
9 specifically to those articles then, it is our view
10 that given the conduct of counsel and agents to date in
11 the hearing, that while there may be some issues that
12 we might take objection to from a general point of
13 view, our overall conclusion is that the conduct and
14 information that was made to the public is not of an
15 order that requires special address by the Board.

16 Finally, the matter of the potential
17 impact on the public dissemination of the matters
18 before this Board is a major concern of my client. My
19 client is of the view, and I think the view has been
20 expressed by the Board, that there is a need to ensure
21 that the public has as much knowledge and opportunity
22 to understand the issues that are being brought before
23 this Board.

24 It is our view that the matters are of
25 great import not only today but to the long-term future

1 of this province and the decision this Board is going
2 to make has great implications in that respect and that
3 the public must be given as much information as
4 possible even at the potential expense of some of that
5 information perhaps being misinformation, but I think
6 the public has its own responsibility to examine
7 information and to carefully scrutinize it and
8 criticize it to their best ability and to arrive at
9 their own conclusions and that should be the option
10 that is made available to the public.

11 Given those conclusions or given those
12 observations, it is the submission that I'm making on
13 behalf of the Ontario Federation of Anglers and Hunters
14 that we do not feel that this Board should take any
15 special measures to deal with this matter, that the
16 existing code of practice that is set out by the Law
17 Society is certainly adequate to deal with counsel.

18 And with respect to that code of
19 practice, I'm looking at the conduct of agents, and I
20 think I can say I'm probably one of the people that the
21 finger is being pointed out very directly. I have
22 looked at that very carefully and I find that code of
23 practice to be very logical and reasonable and I don't
24 feel that any of my conduct particularly or any other
25 agent that I am aware of has exceeded that code of

1 practice in any way.

2 Also as I mentioned the existing laws are
3 there to take due course remedy and other forms of
4 this. I think the interest of this Board should be
5 directed towards the considerable challenge that I
6 think they have before them.

7 THE CHAIRMAN: Other than a voluntary
8 position, are you taking the position that the code of
9 practice that is put forward by the Law Society applies
10 to you?

11 MR. HANNA: Mr. Chairman, I was
12 anticipating that question and I didn't want to - how
13 should I say - unnecessarily fetter myself, but I'm
14 certainly prepared to make an undertaking to the Board
15 that I would certainly, as an agent would, abide that
16 code of practice as if I was counsel.

17 That is my submissions, Mr. Chairman.

18 THE CHAIRMAN: Thank you. Mr. Colborne,
19 I realize that you haven't indicated you wanted to make
20 submissions, I just wanted to advise you that we have
21 before us your letter dated November 27th and have
22 taken it into consideration. Some representations were
23 made at the last occasion with reference to that
24 letter.

25 I don't know if you had anything to add.

1 I would like to give you the opportunity, if you would
2 like to add anything.

3 MR. COLBORNE: No, I have nothing to add.
4 Thank you.

5 THE CHAIRMAN: Very well.
6 Mr. Cassidy?

7 MR. CASSIDY: Thank you, Mr. Chairman.
8 I have listened to the comments made by
9 several of the counsel and representatives here on this
10 issue and I believe essentially the same thing has
11 happened here as happened before Mr. Justice Grange.
12 And I want to refer you back to page 4504 of his
13 transcript where he said:

14 "It is my view that the lawyer whose
15 conduct was in issue and those who
16 support her have missed the point
17 entirely. The complaint has nothing to
18 do with freedom of expression or freedom
19 of the press concepts that were with us
20 long before the Charter of Rights and
21 Freedoms was ever thought of."

22 That is what has happened here with many
23 of my friends, Mr. Chairman, with respect, they have
24 missed the point entirely. It's not freedom of the
25 press or freedom of expression that is at issue, what

1 is at issue is the legal ethic of whether or not the
2 issues in this hearing are litigated by counsel in the
3 press or in this hearing room. The question is: Does
4 that ethic apply to this hearing?

5 Mr. Chairman, you clearly do have the
6 jurisdiction, and Members of the Board, to indicate to
7 counsel in advance of a motion for contempt what you
8 consider to be proper standards of conduct in this
9 hearing with respect to this issue.

10 Nothing in the laws of libel, nothing in
11 the laws of slander, nothing in the laws of defamation,
12 nothing in the Klein decision, nothing in the Starr
13 Inquiry prevent you in any way from telling counsel
14 what you expect of them. By your doing so you will be
15 exercising control over your own process.

16 And I would like to take a minute to file
17 with the Board an excerpt from the Dubin Commission.
18 Mr. Justice Dubin, the Associate Chief Justice of
19 Ontario recently concluded a commission of extreme
20 public significance and importance, and I would like to
21 file this transcript with you and show you how another
22 matter of public importance, how they dealt with their
23 process. (handed)

24 THE CHAIRMAN: Thank you.

25 MR. CASSIDY: I don't propose to enter

1 this as an exhibit because I don't believe any of the
2 other materials have been, Mr. Chairman, but I would
3 like to take a minute or two and just review this
4 portion of the transcript which is, I believe, the very
5 first day - although I'm not sure of that - however,
6 the page number is 12 through 14 would appear to
7 indicate that.

8 And at the very top of page 12 in the
9 first full paragraph Mr. Justice Dubin indicated that
10 he:

11 "...would now like to discuss the conduct
12 of the inquiry, a very public process..."

13 And I emphasize that word because my friends have, and
14 I would point out initially in that first paragraph,
15 the last line, he very clearly sets out what that
16 inquiry was and notes that it's not a lis inter
17 parties, which I am sure you are familiar with that
18 concept, Mr. Chairman.

19 That is exactly the suggestion that Mr.
20 Lindgren suggested in his remarks last day that somehow
21 that meant that since this hearing is not a lis inter
22 parties that you need not formulate standards of
23 conduct.

24 You will note that Mr. Justice Dubin,
25 notwithstanding that it was not a lis inter parties,

1 wen on to formulate rules of direction or gave
2 direction to the counsel appearing before him on page
3 14 in which he clearly stated, and this is the last
4 page of that excerpt that he must refrain from making
5 any comments other what he has to say during the
6 public sessions, and he said it would be wise in his
7 respectful opinion for all those who appear as
8 witnesses or counsel to follow the same pattern and, in
9 fairness to all of those who have an interest in the
10 proceedings, to confine their statements and
11 submissions to the public session of the inquiry.
12 Another example of how a commissioner gave direction to
13 the counsel appearing before him.

14 THE CHAIRMAN: Does it make any
15 difference in your view, Mr. Cassidy, of the fact that
16 the entire proceedings of the Dubin Commission were
17 televised?

18 MR. CASSIDY: With respect to how counsel
19 act I think the question of whether something is
20 televised or not is irrelevant, Mr. Chairman.

21 THE CHAIRMAN: No, with respect to the
22 question of how information in that particular
23 proceeding was disseminated to the public at large?

24 MR. CASSIDY: Mr. Chairman, I can only
25 come back to answer my question as to how counsel are

1 to behave. I think the ethic, is the ethic, is the
2 ethic and I'm saying to you, and it's my client's
3 position, and it's my position as a lawyer, that I have
4 an ethic to obey and if that ethic applies to this
5 hearing, that's fine; whether or not there is a
6 television camera present in the room would not govern
7 me as counsel as to how I am to behave subject to
8 direction from the Board.

9 And I would also indicate with respect to
10 the Patty Starr Inquiry the very excerpt that Mr.
11 Lindgren filed states that he agreed, Mr. Justice
12 Holden, again of the Court of Appeal, agreed with his
13 counsel that when a witness is being examined or
14 cross-examined that counsel should not speak to the
15 press.

16 THE CHAIRMAN: Well, far be it for me to
17 disagree with the Associate Chief Justice, but where he
18 indicates that he must refrain as a judge from making
19 any comments to the media other than what he has to say
20 during the public sessions of the inquiry and in his
21 report, and he indicates that counsel and witnesses
22 should perhaps follow the same course, that doesn't
23 take into account; does it, the flexibility allowed by
24 the revised Rule 21 in terms of counsel in the interest
25 of their client in some cases being permitted to have

1 contact with the media concerning that case relaying
2 information of a factual nature, et cetera.

3 We are not getting into the area of
4 improper conduct on the part of counsel.

5 MR. CASSIDY: Yes.

6 THE CHAIRMAN: We are getting into the
7 area of whether they should have any contact at all.
8 And the Chief Justice appears to be implying that
9 counsel and witnesses should perhaps follow his example
10 and not have any contact at all outside of the hearing
11 room.

12 And the rule, as we read the rule at
13 least, the revised rule in response to the Klein case,
14 et cetera, seems to go beyond that. Is that not the
15 case?

16 MR. CASSIDY: Well, far be it for me,
17 like you Mr. Chairman, to suggest that Mr. Justice
18 Dubin is right or wrong in the direction he gives.

19 I do, however, point that ruling out to
20 you to suggest that you clearly do have the
21 jurisdiction because here's a justice who is handling a
22 commission of inquiry which it does not even have
23 statutory powers of decision who felt it was
24 appropriate for him to make rules of conduct for
25 counsel appearing in front of him.

1 I can repeat, however, what my colleague
2 Ms. Cronk said in the submissions in that we do not
3 object to counsel stating their position to the press
4 that they are taking in the hearing room.

5 THE CHAIRMAN: But presumably the
6 Associate Chief Justice would object to that based on
7 what he said here?

8 MR. CASSIDY: I will leave you to ask Mr.
9 Justice Dubin that at the appropriate time, Mr.
10 Chairman.

11 THE CHAIRMAN: Well, I'm just reading his
12 words.

13 MR. CASSIDY: It would appear that he
14 does not want, in the context of his particular
15 hearing, did not want counsel talking at all to the
16 press, and that is the very reason why we are before
17 you is to get direction from you in respect of your
18 process in respect of your hearing, what is your
19 direction.

20 THE CHAIRMAN: No, we understand that,
21 and we are prepared--

22 MR. CASSIDY: Fine.

23 THE CHAIRMAN: --to provide some
24 direction, but the only point I'm making is: The
25 statements made by Chief Justice Dubin with respect to

1 his particular proceeding appear, on the face of it in
2 any event, to go beyond Rule 21. Would you agree with
3 that?

4 MR. CASSIDY: Well, Mr. Chairman, I think
5 to answer your question, I can neither say yes or no
6 without having the broader context of what Mr. Justice
7 Dubin views the context of Rule 21 to be. I would
8 suggest that he takes a very --

9 THE CHAIRMAN: Well, will you conceded
10 this: That rule 21 in any event seems to allow for
11 some contact with the media outside of the hearing room
12 in certain circumstances?

13 MR. CASSIDY: Yes.

14 THE CHAIRMAN: Okay.

15 MR. CASSIDY: But, however, if I can move
16 on to complete my submissions, I agree with Mr.
17 Lindgren when he stated that this is a new and
18 developing process before your Board. And I come back
19 to my original request, the original request made by
20 Ms. Cronk; and, that is, that we need your direction as
21 to how counsel are to behave in the context of this
22 hearing, Rule 21 aside, and we need to know what your
23 direction is in this matter.

24 And, in essence, I think the questions
25 that we have for you are these, and I'm repeating the

1 questions that Ms. Cronk gave in short form. Is it
2 permissible, one, for a counsel to criticize other
3 parties or other parties' counsel in the media by
4 imputing improper motives to that party or its counsel;
5 two --

6 THE CHAIRMAN: Or by criticizing the
7 evidence, is that correct, and indirectly imputing
8 improper motives to counsel?

9 MR. CASSIDY: Implicitly, yes. Two, is
10 it permissible for a counsel to criticize the Board in
11 the media by suggesting unfairness in the Board's
12 procedures or the way in which it is conducting a
13 hearing; and, three, is it permissible for a counsel to
14 argue in the media or urge a particular result in a
15 matter pending before the Board. Those are the three
16 questions that we had for you in terms of seeking your
17 direction with respect to this matter.

18 We have agreed with your view that it is
19 preferable to have the answers to these questions to be
20 formulated in a generic context so that all counsel and
21 agents will know what the standards are at this hearing
22 and, in my view, we must know what those standards are.

23 Those are my comments.

24 THE CHAIRMAN: Very well. And we can
25 advise all counsel that we will provide you with that

1 direction which will be released in Toronto on Friday.

2 MR. CASSIDY: Thank you, sir.

3 THE CHAIRMAN: And you can obtain copies
4 of that from either the Board in Toronto; for the
5 parties up here, we will attempt to fax a copy of those
6 directions up here to our office up here so that Mr.
7 Colborne or any of the other parties who are resident
8 in Thunder Bay can obtain them from Ms. Devaul.

9 The reason we are going to issue them on
10 Friday is because we would like that direction to be
11 there prior to Dean Baskerville's appearance. In the
12 event that there is any media coverage of that
13 particular examination, we would like counsel to at
14 least be apprised of what the Board considers
15 appropriate, so that it will also cover that
16 examination as well.

17 All right. Ladies and gentlemen, we are
18 going to take a 20-minute adjournment at this time just
19 before we start the scoping session, then we will be
20 down to complete that, and then we will break for the
21 day.

22 Thank you.

23 ---Recess taken at 4:35 p.m.

24 ---On resuming at 5:00 p.m.

25 THE CHAIRMAN: Thank you. Be seated,

1 please.

2 Counsel, just before we get into scoping
3 of Panel 17, we also want to make a couple of enquiries
4 in terms of some things that will occur in January; one
5 will be completing Panel 17, but the Board would like
6 to know, Mr. Freidin, whether or not you are going to
7 be bringing anything before the Board concerning the
8 clearcut issue.

9 If so, is it going to be a formal
10 presentation with a panel of witnesses or a witness or
11 whatever; and, if so, will there be a witness statement
12 of some kind relevant to that evidence; and, if so, we
13 would like to be able to set some guidelines for you in
14 terms of distributing that material far enough in
15 advance so that people have an opportunity to have
16 their own experts review it and then treat it as any
17 other section of evidence in this hearing.

18 MR. FREIDIN: Yes, it is our intention to
19 in fact file material in relation to clearcuts; yes, it
20 is our intention to have a witness panel to deal with
21 it; yes, it is our intention to provide a witness
22 statement.

23 The nature of that witness statement, Mr.
24 Chairman, may be somewhat different in that, in part of
25 it it will be perhaps more brief than it has been in

1 the past. There would be two parts to the evidence,
2 one explaining the exercise that took place and,
3 secondly, an interpretation of the findings or the
4 results of that exercise.

5 The first part, the description of the
6 exercise itself was one that most of the parties here
7 were involved in the creation of and subsequent to the
8 creation of the maps which was a major product, there
9 was a session in which Mr. Kennedy at some length
10 explained the maps. So the evidence in relation to
11 that will come really as no surprise to any of the
12 parties.

13 THE CHAIRMAN: Well, could that not come
14 forward - just to use our fancy new procedures - by way
15 of almost an agreed Statement of Facts, an agreed
16 position by the parties as to how the exercise was
17 conducted without that having to be subject to
18 cross-examination or anything else?

19 MR. FREIDIN: No, I think it's best that
20 it come through oral evidence. What happened was
21 things happened in the field, that was all done by
22 Ministry of Natural Resources people, and...

23 THE CHAIRMAN: But the methodology was
24 agreed upon; was it not?

25 MR. FREIDIN: I can't really tell you, to

1 be quite frank, exactly what was agreed on and what
2 wasn't. And my understanding is that it would be more
3 expeditious and more clearly understood by the Board if
4 the exercise that was undertaken is explained by Mr.
5 Kennedy, I think he did it probably in about two hours
6 in the session that was held.

7 MR. CASSIDY: I don't have a crystal ball
8 and I haven't seen what you are going to produce, but I
9 would expect that you would probably see more
10 cross-examination on the second part of that material
11 than on the first, since there has already been an oral
12 explanation offered and there was an agreed - I can't
13 presume to speak for the other parties - but there
14 wasn't a great degree of disagreement as to how the
15 procedure was carried out.

16 Whether the methodology was correct, I
17 can't speak for the other parties.

18 THE CHAIRMAN: So is it a fair assumption
19 to make that the parties are still unagreed on what
20 constitutes a clearcut?

21 MR. FREIDIN: I think you should await
22 the evidence on that, because what appeared at one time
23 to be a very simple question turned out, I think our
24 evidence will be, by agreement to be a very difficult
25 question and that is what led to the development of

1 this exercise which this panel will describe.

2 In terms of the interpretation of the
3 results, we would be providing that interpretation
4 through - and the final witnesses have not been
5 determined - but it's really in relation to effects on
6 wildlife, so it will in all likelihood be Dr. Euler and
7 perhaps Mr. McNicol.

8 We do intend and we feel it's proper that
9 we do supply an outline of what that evidence will be;
10 in other words, what their evidence will be in terms of
11 the interpretation.

12 I guess that gets us down to the timing
13 and I know that they're working as diligently as they
14 can. Dr. Euler is here, as you know. If that evidence
15 is going to follow --

16 THE CHAIRMAN: Well, let's take a quick
17 run at the estimates for Panel 17. We are going to be
18 commencing that evidence presumably on January the 8th?

19

20 MR. FREIDIN: 9th.

21 THE CHAIRMAN: Oh sorry, 9th. Right.
22 And how long do you anticipate that panel is going to
23 take? You are going to have two days in direct.

24 MR. FREIDIN: We are hopeful. Yes, we
25 are hopeful to do that in half a day.

1 THE CHAIRMAN: And are there any
2 estimates from the parties--

3 MR. CASSIDY: Half a day, Mr. Chairman.

4 THE CHAIRMAN: --on the
5 cross-examination.

6 Ms. Seaborn?

7 MS. SEABORN: I am sorry. Mr. Freidin,
8 did you say half a day in chief?

9 MR. FREIDIN: Yes.

10 MR. MARTEL: Half a day?

11 MR. FREIDIN: Half a day.

12 MS. SEABORN: Probably half a day, Mr.
13 Chairman.

14 THE CHAIRMAN: Mr. Hanna?

15 MR. HANNA: We'll try and maintain our
16 record and stay at half a day, but it could be a little
17 longer, but I will do my best to stay at half a day.

18 THE CHAIRMAN: Ms. Kleer?

19 MS. KLEER: Again, we haven't prepared
20 anything, but I expect half a day.

21 THE CHAIRMAN: Does anyone want to try
22 for more or less than half a day?

23 Mr. Colborne?

24 MR. COLBORNE: By the time I'm reached
25 I'm sure that I will be less than half a day.

1 THE CHAIRMAN: We are going to put you
2 down for half a day.

3 And Forests for Tomorrow. I guess we
4 haven't got an estimate from them, although based on
5 their statement of issues they will probably be longer.

6 MS. BLASTORAH: Mr. Chairman, I can
7 advise that I had few brief words with Mr. Lindgren
8 last week and he indicated that they would be brief.

9 So I would take that to mean half a day
10 to a day. He didn't specify, but I would assume that.

11 THE CHAIRMAN: Very well. So based on
12 that we have got three and a half maybe four days plus
13 a half a day for direct -- say, five days of evidence
14 should cover that panel.

15 Is that your estimations?

16 MR. FREIDIN: I'll accept your
17 mathematics, Mr. Chairman. That takes us to the --

18 THE CHAIRMAN: I wouldn't do that either,
19 they may be quite off.

20 MR. CASSIDY: That's probably over
21 generous from my quick look at it, unless Mr. Lindgren
22 takes longer than being brief.

23 MR. MARTEL: NOTOA, we haven't got NOTOA
24 yet.

25 THE CHAIRMAN: NOTOA we don't have.

1 MR. CASSIDY: NOTOA.

2 THE CHAIRMAN: They put in a statement of
3 issues. A couple of the parties were slightly late and
4 the Board agreed to accept their statements on this
5 occasion.

6 MS. BLASTORAH: Mr. Chairman, I should
7 advise that Treaty 3 contacted us last week and
8 indicated that they would be filing it late and we
9 indicated that we had no problem.

10 THE CHAIRMAN: Right. Well, we want to
11 for the rest of the case keep these dates as close as
12 possible.

13 Ms. Seaborn?

14 MS. SEABORN: Mr. Chairman, one question
15 of clarification which may change my estimate. I had
16 forgotten that one of the additional issues we raised
17 in our statement of issues was to do with a proposed
18 new AOC package that at one point, I understood from
19 Mr. Freidin, Mr. Bisschop would be introducing during
20 Panel 17.

21 There were a number of questions on the
22 area of concern planning process that we put over from
23 Panel 15 to await Mr. Bisschop's explanation and that
24 has just occurred to me that that may lengthen matters
25 depending on what the evidence is.

1 MR. FREIDIN: That's true. One thing I
2 should perhaps canvass with counsel privately is that
3 there may be some counsel here who are not particularly
4 concerned with that evidence of Mr. Bisschop and it
5 might be more appropriate to just have Mr. Bisschop
6 deal with that separate from Panel 17.

7 I mean he will just stay up there, but
8 Panel 17 will finish, we will deal with that sort of as
9 an add-on or maybe even before Panel 17, but...

10 THE CHAIRMAN: Well, in any event I think
11 we are looking at five or six days, somewhere in that
12 nature, and that will probably have us finishing your
13 case--

14 MR. FREIDIN: Does'nt that sound nice.

15 THE CHAIRMAN: --earlier than
16 anticipated, if I can put it that way.

17 MR. FREIDIN: That sounds nice too.

18 MS. KLEER: Depends on your reference
19 point, Mr. Chairman.

20 THE CHAIRMAN: That's right. With the
21 Industry's case ready to go, I suppose --

22 MR. FREIDIN: You are forgetting about --
23 as I understand your calculation, Panel 17 would
24 probably end in that week if we are sitting right
25 through including Friday, so it is possible, let's say

1 at the earliest, finish at the end of that week, then
2 we have got --

3 THE CHAIRMAN: The clearcut evidence.

4 MR. FREIDIN: The clearcut evidence which
5 I'm assuming - and, again, the interpretation part of
6 it not having been completed, it's difficult for me to
7 estimate exactly how long that would take - but let's
8 assume we fit it into the two days, until people see
9 the interpretation it's difficult for them to give any
10 estimate as to how long they might be wanting to
11 cross-examine.

12 So I think we are probably getting ahead
13 of ourselves to probably try to guess how much longer
14 into January we will be.

15 I am sorry, Mr. Chairman. I thought for
16 some reason we were sitting in Toronto and then sitting
17 the whole week. So we are not, so only sitting three
18 days a week -- see I've been away, it's been nice not
19 being here, I've forgotten about all these procedural
20 matters.

21 It looks like we won't finish until the
22 end of January, Mr. Chairman.

23 MS. KLEER: Mr. Chairman, one thing I
24 would like to clarify on Panel 17, I think it was
25 raised in the cross-examination on 15, that there might

1 be submissions from the parties concerning the
2 amendment procedure and amendments to the Act, and I
3 presume those would be legal submissions that would
4 occur after the evidence was in, or how do you intend
5 to deal with that?

6 THE CHAIRMAN: Well, I'm not sure that --
7 are we going to deal with argument at the end of that
8 panel or at the end of the case when it would normally
9 be dealt with.

10 I would think that those kinds of
11 submissions would be made at the end of the case.
12 Would that not be your understanding, Ms. Kleer?

13 MS. KLEER: Well, I guess I'm just
14 reading your comments that you had made about -- I will
15 just read your comments. And you had said:

16 "If you are indicating Panel 17 is the
17 place; i.e., the place to deal with that
18 issue, we will be content to wait until
19 then, but we would want to see
20 submissions of various parties concerning
21 any such amendment procedure."

22 And I just wasn't clear when you wanted
23 to hear those submissions.

24 THE CHAIRMAN: Well, without reviewing
25 that transcript I would have thought that we would

1 proceed in the normal way: We would be examining,
2 cross-examining the panel, the other parties would put
3 in their case in the normal fashion, and then they
4 would put in their submissions for any changes during
5 their own case and then we would have arguments and
6 submissions at the end after the Ministry's reply
7 evidence.

8 MR. FREIDIN: Right. And, of course, I
9 think that seems to me the way I thought it would go
10 and, of course, come the end of January when we see the
11 terms and conditions from the other parties we will
12 have a very clear indication hopefully as to what their
13 position is on that particular matter.

14 THE CHAIRMAN: And that would assist in
15 terms of delineating what the differences are because
16 we will have in this case, which is different from
17 other cases, all of the parties' terms and conditions
18 in at a much earlier stage.

19 MS. KLEER: Okay. Thank you.

20 THE CHAIRMAN: Now that, Mr. Cassidy, may
21 leave you ready to proceed with your first panel
22 towards the last week of January or the first week of
23 February, and continue on until we are ready to break
24 for the negotiating session.

25 MR. CASSIDY: Mr. Chairman, Mr. Cosman

1 has advised me he intends address you on this issue on
2 Monday in Toronto just briefly in regard to scheduling,
3 so I would rather reserve any comments I have about his
4 part of the case until he has the benefit of speaking
5 to you.

6 THE CHAIRMAN: Okay.

7 MR. FREIDIN: In relation to the timing
8 then of this witness statement, Mr. Chairman, if I
9 might, I would like to speak to the people who have to
10 produce the material upon which we would base the
11 witness statement and get back to you, hopefully
12 tomorrow, and tell you what our suggestion is as to
13 what the reasonable time would be.

14 THE CHAIRMAN: All right. There won't be
15 the normal time that was allowed for some of the other
16 witness statements like 60 or 70 days in advance
17 because I think we will be up to that section of the
18 evidence more quickly than that.

19 We would just like to ensure that the
20 other parties have a reasonable opportunity to have
21 their experts and counsel review them and formulate
22 their positions.

23 MR. FREIDIN: I think we will be able to
24 provide that, and I think that it should be kept in
25 mind that there was a lot of evidence on clearcut

1 including the potential effects of clearcuts on
2 wildlife. To that extent, the interpretation of an
3 actual exercise perhaps will be examined with the
4 knowledge of that other evidence, so it's not as if we
5 are starting a whole new topic.

6 MRS. KOVEN: No, you wouldn't be starting
7 a new topic, but if you take the two weeks out for the
8 Christmas break, I don't know how many experts will
9 look at this clearcut business over the Christmas
10 holidays, and if you submitted it next week. You would
11 you really only have four weeks for the parties to work
12 with.

13 MR. FREIDIN: I can tell you, we cannot
14 submit it next week.

15 MRS. KOVEN: Exactly. So it's going to
16 be a very short time.

17 MR. FREIDIN: That's correct. Well, I
18 acknowledge that Mrs. Koven, but the other parties do
19 have all of the material, the material was originally
20 produced as a result of an interrogatory asked by
21 Forests for Tomorrow, they have copies of all of the
22 maps.

23 MRS. KOVEN: And all the interpretations?

24 MR. FREIDIN: No, no, not the
25 interpretation. Other parties have had access to all

1 of those maps, and all I'm saying is to the extent that
2 they might want to have their experts look at that
3 material now to get some initial idea of what they
4 believe that material shows, that could offset in part
5 at least a shortened period for them to actually look
6 at the Ministry's interpretation of it. That is all.

7 THE CHAIRMAN: Well, we are raising it as
8 a possibility of creating some problem, so we would
9 like you to have the witness statement out as soon as
10 you can.

11 MR. FREIDIN: And I am assuming, Mr.
12 Chairman, that because of the shortness of time this
13 will be a witness statement which will not, and I'm
14 suggesting does not have the provision for
15 interrogatories.

16 THE CHAIRMAN: Well, that would probably
17 make sense in that if we are going to deal with the
18 evidence orally, we won't have time to go into the
19 interrogatory process. So I would suggest that the
20 parties can just ask the questions of the witnesses.

21 MR. FREIDIN: Thank you.

22 MS. SEABORN: And, Mr. Chairman, I think
23 as Mr. Freidin indicated we must remember that this
24 witness statement is, in my mind, an answer to an
25 interrogatory.

1 MR. CASSIDY: A response to an
2 interrogatory.

3 MS. SEABORN: This whole thing came about
4 as a result of a question Forests for Tomorrow asked.

5 THE CHAIRMAN: Right. Okay. Let's
6 proceed on then to the scoping of Panel 17.

7 The Board has reviewed the statements of
8 issue and the witness statement as well as the
9 statements of issue put in by the various parties and
10 it is evident from those that the parties essentially
11 do not require anything to be taken out of the
12 statements, and the Ministry is essentially limited to
13 a maximum of two days on the direct evidence.

14 And you have indicated, Mr. Freidin, that
15 you are going to be quite a bit shorter than that, so
16 you can proceed with the direct evidence as you see
17 fit.

18 We don't feel though, as a Board, that we
19 need a lot of time spent on the economic aspects of the
20 industry. We feel we have received from MNR a good
21 deal of that information already in previous panels and
22 we know that the industry will be spending some time
23 time in their case dealing with the same issues. So it
24 seems at this stage, from the MNR perspective, to be
25 somewhat redundant to spend a lot of time on those

1 issues.

2 Now, dealing with specific paragraphs, we
3 would like some clarification or some attention to be
4 paid to the following suggestions: Paragraph 31, there
5 appears to be an underlying assumption that softwood
6 supply becomes limited over time.

7 MR. CASSIDY: Did you say paragraph 31,
8 Mr. Chairman?

9 THE CHAIRMAN: Sorry, page 31.

10 MR. CASSIDY: I only have 27 here.

11 THE CHAIRMAN: Page 31.

12 MR. CASSIDY: Oh.

13 THE CHAIRMAN: Sorry. We would like an
14 explanation of why that is so under Alternative "B".
15 We can't recall any of the regeneration figures for
16 softwood in the evidence so far, and we would like you
17 to try and tie together the previous evidence that we
18 have heard to provide some support for that assumption.

19 Page 48. In effect, you are asking us to
20 assume that in terms of timber management in the
21 province there are stumpage fees, area charges and
22 corporate taxes and these will continue as a reflection
23 of the overall activity of the forest sector. Where is
24 the evidence that ties these charges into industry
25 performance?

1 And it's our understanding that the rates
2 applied for stumpage fees, for example, may be
3 historical in origin and don't really change in terms
4 of rate, although obviously the amounts collected by
5 the province will be affected by the industry
6 performance; in other words, if you cut less, you will
7 receive less in stumpage fees.

8 MR. FREIDIN: That is what you mean then
9 in your term 'industry performance', you mean the
10 amount of the actual harvest?

11 THE CHAIRMAN: That's right. And we are
12 just wondering why these rates are set in a fixed way
13 as opposed to fluctuating themselves with industry
14 performance.

15 I don't know if we are making ourselves
16 clear. There may not be an answer for that.

17 MR. FREIDIN: Well, I'm not that clear,
18 but it may be that my advisors are clear. So why don't
19 we just leave it at that. If I could have just one
20 moment.

21 --_Discussion off the record

22 MR. FREIDIN: I'm advised, Mr. Chairman,
23 that the question we believe is well enough understood
24 that we can provide an answer.

25 MR. CASSIDY: Well, I look forward to the

1 answer because I don't understand that question.

2 MRS. KOVEN: Well, I think the question
3 that we have, the confusion first of all is that we
4 have gotten to this point in the hearing and we either
5 have forgotten or we didn't receive very much
6 information about how stumpage fees are set and what
7 they are meant to represent in terms of their amounts.

8 And the question that interests us now is
9 trying to understand your statement that somehow the
10 stumpage fees, area charges, corporate tax payments are
11 set with the performance of the industry.

12 The stumpage fees are some flat rate set
13 against the number of trees you cut. Is the only
14 fluctuation in the amount that you receive from total
15 harvest, or in fact is there any system for fluctuating
16 stumpage rates to the value of the tree cut, for
17 example, as opposed to the number of trees harvested.

18 We don't know the history of stumpage
19 rates, we haven't received that evidence.

20 THE CHAIRMAN: So in a poor economic
21 setting would you be reducing the rates of stumpage, or
22 would you be increasing them in a good performance
23 year?

24 MRS. KOVEN: And that is what the
25 statement seems to say too us, if it's fixed to the

1 level of industry; do you accept a lower income or do
2 you boost rates?

3 MR. FREIDIN: Yeah, okay.

4 MR. CASSIDY: Thank you very much I
5 appreciate that clarification.

6 MRS. KOVEN: I think there was a further
7 question related to stumpage; and, that is, if you are
8 going to give us some evidence on it, could we have
9 some clear figures about the amount of stumpage that is
10 collected annually.

11 MR. MARTEL: Yes, and the costs of what
12 goes on out there to the province, the Treasury in
13 terms of how much comes in and how much goes out.

14 MRS. KOVEN: The figure you have given us
15 in the witness statement 484-million or whatever as
16 being the provincial benefit from the industry
17 generally doesn't separate out the stumpage fees from
18 any other income you receive from the industry, and
19 that is an answer we would like to have.

20 THE CHAIRMAN: Okay. Page 53. There is
21 an indication that silvicultural jobs will be lost if
22 there is no work under Alternative B, and our question
23 is: How does this translate into numbers? How many
24 jobs are we talking about?

25 We think we know a little bit about the

1 type of workforce in that it's generally seasonal, but
2 what size of a workforce are we talking about? You
3 indicate that there will be a job loss and we would
4 like to try and assess how significant that job loss
5 will be under Alternative B if nothing is done in terms
6 of regeneration, or requiring silvicultural
7 preparation, site preparation that kind of thing.

8 Page 54. Alternative C --

9 MR. FREIDIN: What was that?

10 THE CHAIRMAN: Sorry.

11 MR. FREIDIN: What was the page before?

12 THE CHAIRMAN: 53, I believe.

13 MR. FREIDIN: 53.

14 THE CHAIRMAN: Going to page 54,
15 Alternative C. You seem to be making the statement
16 that the harvesting of timber standing in no-cut
17 reserves is negligible to the amount of wood supply
18 and you have to take into account the comparison
19 between Alternative B and Alternative C, and this
20 appears to be contrary in our view to the position
21 taken throughout other parts of the hearing that one
22 must look at cutting in reserves if there is no
23 legitimate reason for not cutting in the reserves; and,
24 that is, there is some evidence before us of, in
25 certain cases, the size of reserves can be reduced.

1 That was essentially the rationale for getting rid of
2 the donuts around lakes, because some areas can be
3 harvested without creating any major environmental
4 impacts.

5 But that seems contrary to the statement
6 that if you harvested all of the reserves it wouldn't
7 make very much impact in terms of the amount of wood
8 supply available. There seems to be a major
9 inconsistency in those statements.

10 Another issue we would like you to
11 consider is: Have you actually looked at the social
12 and economic impacts or dislocation for communities
13 where in fact timber management activities have ceased
14 as opposed to speculating on what the social and
15 economic dislocation costs might be?

16 It appears to us - and we know this has
17 been done certainly in the mining industry side - that
18 where a mine closes and there is a major impact on a
19 particular community of a social and economic nature,
20 these have probably been documented in the past; but
21 have you done the same with respect to ceasing timber
22 management activities and their effect of a social and
23 economic nature on a particular community?

24 There must be communities that have been
25 impacted in the past in that way and have you studied

1 them; and, if so, what are the results of those
2 studies? It seemed that Ms. Coke's evidence was more
3 on the predictive or speculative side of what might
4 happen should those kinds of activities cease as
5 opposed to any empirical fact.

6 Okay. We would like you to give some
7 consideration, without reviewing all of the evidence we
8 have already heard, to the question or the statement on
9 page 95 that seems to indicate that timber management
10 plans attempt to mitigate the impacts of timber
11 management activities on wildlife and, in some cases,
12 there are positive effects. We would like some further
13 explanation as to how these activities improve what
14 might have occurred in nature without those activities.

15 We are not saying there can't be
16 improvements or anything like that, but we would like
17 perhaps a further explanation of how the plans and
18 their mitigative components in effect are better than
19 what occurs in nature without these activities.

20 Now, on page 121 Mr. Bisschop talks about
21 amending procedures with respect to the Class
22 Environmental Assessment and we would like to know how
23 this fits into the amending procedures to the
24 individual timber management plans.

25 In other words, we would like to know

1 whether or not that by amending a series of timber
2 management plans - and we don't want a review of the
3 types of amendments whether they're administrative, et
4 cetera, under the plans - but by taking a series of
5 plans and amending the plans, is the result an
6 avoidance of amending the Class EA, or where do you get
7 to the cut-off point where you decide that there seems
8 to be a recurring problem in some plans out there that
9 require amendment and perhaps what we should do is
10 amend the Class EA instead of avoiding amending the
11 Class EA by consistently amending the individual plans?

12 And, again, we are talking in the Class
13 EA of recurring activities and we are talking in the
14 individual plans of recurring amendments.

15 MR. FREIDIN: Could you perhaps provide
16 an example of what you had in mind? I'm assuming,
17 listening to you, that it's the same sort of activity
18 in the same sort of circumstances always ending up
19 having an amendment?

20 THE CHAIRMAN: That's right. What we are
21 saying, if there is a commonality problem that seems to
22 arise that requires amendment in the individual plans,
23 do you reach a stage where you decide that really the
24 Class EA should be amended.

25 We shouldn't have to go through these

1 individual plan amendments, what we really should be
2 looking at is amending a provision in the Class EA so
3 that those kinds of individual amendments are no longer
4 required.

5 Conversely the question is: Can you
6 avoid a Class EA type of amendment by going through a
7 series of individual plan amendments? Is it a method
8 of avoiding the legislation in terms of amending the
9 Class EA and relying on your own amending formulas
10 within the Ministry for amending the individual plans?

11 Does that help?

12 MR. FREIDIN: I think I understand, yes.

13 THE CHAIRMAN: Okay. All right. That is
14 the sum and substance of our comments on the Ministry's
15 statement of evidence. Those are the areas that the
16 Board is interested in; I'm sure some of those areas
17 are also of interest to some of the parties.

18 We don't have any real problems with the
19 statements of issues put in by the various parties
20 because we feel that most of the areas that they wish
21 to cross-examine on are certainly relevant to the
22 evidence to be put forward in this panel.

23 With one small exception, Mr. Hanna, and
24 it's not that we have difficulties with the relevancy
25 of some of the areas you indicated you would

1 cross-examine on, but we do have some problem with the
2 generalized nature of some of your areas which we feel
3 would be almost impossible to answer without
4 essentially writing a book about each and every one of
5 them and we are thinking of the specific paragraphs 3,
6 7, 8, and 14.

7 Well, for instance, paragraph 7 and 8:
8 What changes in the overall welfare of the people of
9 Ontario will arise from each alternative to?

10 Now, think about a party being required
11 to answer that kind of question. We feel it is too
12 unfocused, too generalized, and would not be able to be
13 answered in sufficient particularity to be of a lot of
14 value.

15 The same, for instance, with the forest
16 production policy which is not in effect yet, the
17 revised one. You are saying: How will changes in the
18 forest production policy affect the evaluation of
19 alternatives to. Well, until you know what the changes
20 in the forest production policy are, how do you get
21 around to evaluating what the impacts will be.

22 MR. HANNA: Perhaps, Mr. Chairman, if I
23 could respond specifically to that one, I will try and
24 deal with paragraph 7 in a moment.

25 THE CHAIRMAN: Okay.

1 MR. HANNA: The reason I raised that is
2 the fact that the forest production policy, as I
3 understand, was originally expected to be tabled I
4 believe in mid-1988 and I believe I can provide
5 documentation that has been provided to that end. My
6 expectation was, therefore, that this document is
7 imminent and given my expectation of that, that was the
8 reason for this line of questioning.

9 I certainly appreciate what the Board is
10 saying, if that document is not imminent we are into a
11 strictly hypothetical situation and I can see the
12 Board's concern that that would be essentially an
13 unanswerable question. It was my expectation that that
14 was imminent.

15 So if the answer is it's not in, then we
16 are not sufficiently focused --

17 THE CHAIRMAN: Well, our understanding
18 was it may be as late as 1991. What is the Ministry's
19 understanding of when that is going to be forthcoming?

20 MR. FREIDIN: I can't give you an exact
21 date. I know that the original timetable -- they're
22 not on the original timetable and they're certainly not
23 going to be ready for the purposes of Panel 17, so...

24 MR. HANNA: Well, Mr. Chairman, perhaps
25 to expedite this, if that is the case, I certainly

1 appreciate what you are saying. I think the line of
2 questioning I would ask would be very brief; and, that
3 is, simply the relationship between the forest
4 production policy and the assessment process.

5 Obviously we can't go through a complete
6 analysis of all the possible permutations and
7 combinations since it would not be possible, and I
8 certainly agree and concur with the Board in that
9 respect.

10 With respect to paragraph 7, perhaps the
11 difficulty here is the term welfare. The reason I use
12 that term - and perhaps this is my problem being a
13 technical expert also - is that had very specific
14 meaning to me; and, that is, that classical
15 socio-economic measures such as which are what I would
16 call market measures in terms of economic impact, et
17 cetera, often do not capture the non-traded type of
18 impacts in terms of socio-economic and that is usually
19 what's referred to in that technical sphere of
20 literature as welfare, which is not welfare perhaps in
21 the context the Board was thinking of, and it's really
22 a very specific technical term in terms of
23 socio-economic evaluation, It was from that point of
24 view that that phrase was used in that particular
25 context.

1 I can appreciate if we are looking at it
2 in terms of the social welfare of society, in that
3 broad context of that word, that obviously would not be
4 appropriate, it would be much too broad a question.

5 THE CHAIRMAN: Well, for instance, in
6 taking an alternative such as doing no regeneration
7 whatsoever, doing nothing, the nil alternative, is it
8 very practical to try and look at what the overall
9 welfare of the people will be arising from exercising
10 that alternative? I mean, it is nice in a theoretical
11 sense to --

12 MR. HANNA: Without stepping over the
13 line I'm trying to perhaps give my own technical
14 opinion on it. I would say yes, sir.

15 I think the difficulty we are having
16 here - I can understand the question the Board is
17 bringing forward - we are talking about welfare and
18 sort of looking at a very broad and generalized way, I
19 can understand that that would be a very difficult and
20 relatively meaningless type of line of enquiry.

21 If we are looking at welfare as being a
22 very specific technical term dealing with those
23 non-market goods that are not necessarily captured in
24 the type of analysis that's brought forward in the
25 assessment or in the assessment of alternatives that is

1 presented here, then I think that line of enquiry has
2 some benefit.

3 THE CHAIRMAN: Well, I don't know if the
4 Ministry appreciates what is meant in terms of Mr.
5 Hanna's purported line of questioning, but the Board
6 certainty doesn't. And I don't know, Mr. Freidin, how
7 you would respond to that. And what we are trying to
8 narrow down here is to see whether or not you intend to
9 respond to that.

10 MR. FREIDIN: Well, to be quite frank, I
11 don't understand what is meant by it. I agree that it
12 seems broad and the suggestion or the clarification
13 made by Mr. Hanna I don't completely understand, but it
14 seems to me that it is not reducing the scope
15 considerably as we have the same problem as to the
16 broadness of the issue being raised.

17 I have difficulty knowing whether any of
18 the witnesses on Panel 17 could respond because I still
19 really don't understand exactly what it is that Mr.
20 Hanna is driving at.

21 MR. HANNA: Well, Mr. Chairman, I am sure
22 you can appreciate I am in a difficult situation of the
23 age old problem I face in this hearing of trying to
24 present my case through cross-examination.

25 THE CHAIRMAN: Well, that's the point.

1 MR. HANNA: That's the problem.

2 THE CHAIRMAN: I don't think you should
3 be presenting your case through cross-examination.

4 MR. HANNA: Right, and I understand the
5 concern of the Board in that respect. By the same
6 token, I think it is legitimate to ask these witnesses
7 that will be coming forward in this panel to have a
8 look at that, have a look at it from that point of view
9 and if it is simply a matter of we don't understand
10 what you are saying and, no, we haven't, then --

11 MR. FREIDIN: Tell us what it is that you
12 are suggesting that they may have looked at or should
13 have looked at so they can know in advance whether
14 their response to you will be; yes, no, or a qualified
15 answer?

16 MR. HANNA: Mr. Chairman --

17 MR. FREIDIN: I would like to know, and I
18 am sure my witnesses would like to know what it is that
19 you are asking them about.

20 THE CHAIRMAN: Without worrying about the
21 fact that you might be indicating what your side of the
22 case will be, go ahead and tell us what you are looking
23 for so that these witnesses can prepare for your
24 questions.

25 There is no sense in surprising them at

1 the time and it won't be helpful to you if they don't
2 understand at that time what you are driving at,
3 because they probably won't be able to answer it in the
4 context you want it answered.

5 MR. HANNA: I appreciate that, Mr.
6 Chairman, and I think it is in respect to that that we
7 brought it to the Board at this time, to avoid that
8 sort of surprise.

9 What I would suggest, rather than being
10 sworn in at this time and providing the technical
11 evidence in terms of the way that I perceive this, can
12 I suggest to the Board that I speak to Mr. Clark or one
13 of the witnesses and I will undertake through that
14 forum to try to explain to them what I am getting at
15 and provide them with that clarification.

16 THE CHAIRMAN: Okay. Mr. Freidin, why
17 doesn't Mr. Hanna have a conversation with you and try
18 to indicate to you what he wants answered.

19 MR. FREIDIN: Mr. Chairman, I would
20 rather that it be done here so I know now. It is
21 difficult enough to schedule all of these meetings.
22 There are other people here who would like to know what
23 the answer is so they can determine whether they are
24 interested in the subject matter, and I am not in a
25 position to be communicating to other parties what this

1 discussion were.

2 THE CHAIRMAN: Okay. Mr. Hanna, without
3 having to swear you in and to give evidence or
4 anything, can you not just put it forward as a simple
5 explanation of what you want, and then we will allow
6 you the liberty later on in your own case of proving
7 whatever position you would like clarified--

8 MR. HANNA: Thank you for that liberty.

9 THE CHAIRMAN: --in terms of your own
10 witnesses or in terms of yourself, if you are going to
11 end up being a witness as well.

12 MR. HANNA: Well, I think given that I
13 have now undertaken to go by the Code of Practice, I
14 think I have committed myself not to be a witness, so I
15 think that will be the situation, Mr. Chairman.

16 The matter relates back to the question
17 that we had of Mr. Clark in Panel 11 dealing with the
18 matter of consumer surplus and we were talking about
19 the estimation of the value in socio-economic terms of
20 those matters that are not reflected in normal market
21 transactions; in other words, buying and selling goods.

22 There is extensive economic literature,
23 socio-economic literature looking at what the value is
24 and I will give you a specific example, and one that is
25 somewhat topical, the Temagami situation, the old

1 growth forest in maintaining those for - how should I
2 say - their values other than wood in terms of, if
3 nothing else, the aesthetic values that those might
4 have available to the public.

5 And that is usually determined with a
6 whole school of training in terms of what's called
7 welfare economics and it is not in terms of giving
8 welfare payments to people, it is dealing with what is
9 called welfare economics, looking at estimating these
10 non-market goods in terms of their socio-economic
11 value.

12 When I asked this question in terms of
13 the welfare of the people, I am looking at what is the
14 value both of the managed forest and non-managed forest
15 in those terms and whether that type of assessment has
16 been done.

17 So I don't know whether that clarifies
18 it. I realize it is a very technical subject and I am
19 really not obviously prepared to take half an hour --

20 THE CHAIRMAN: So what do you do, do you
21 end up with a number at the end of all this?

22 MR. HANNA: Usually you end up with some
23 sort of quantitative estimate and it is also associated
24 with usually a matter such as distribution of
25 benefit -- the parties that are going to benefit and

1 not benefit by it, all the various social issues that
2 go along with that.

3 But it is part of the socio-economic
4 assessment that will be undertaken where you are
5 dealing with both market and non-market goods.

6 THE CHAIRMAN: And I take it that your
7 questions will be asking the panel: Have you done it;
8 if so, what are the results. If you haven't done it,
9 then I guess that ends the questioning on that topic
10 with that panel and you will leave it to your own side
11 of the case to indicate what should have been done.

12 MR. HANNA: I will look at the
13 transcripts and try and use those questions in my
14 cross-examination, Mr. Chairman.

15 THE CHAIRMAN: Does that help you out,
16 Mr. Freidin?

17 MR. FREIDIN: Yes.

18 THE CHAIRMAN: Okay.

19 MR. HANNA: Perhaps just one other
20 paragraph there, Mr. Chairman.

21 THE CHAIRMAN: The other paragraph was 14
22 and we are wondering where you were going in terms of:
23 How do the requirements for a Class EA differ from
24 those from an individual EA.

25 What we have before us is the Class EA.

1 We are not assessing something on an individual basis
2 here and the supplementary question: Is the role of a
3 Class EA different from that of an environmental
4 assessment for an individual undertaking, and I think
5 that's self-evident in terms of the purpose and utility
6 of going through a Class EA approach.

7 As the Board understands it, to be quite
8 simple, it is to avoid having to go through an
9 individual assessment on each and every activity which
10 was approved under the Class EA. I think it is as
11 simple as that.

12 MR. HANNA: Yes. I think it is a matter
13 of, in this particular paragraph there is reference to
14 what is viewed as being the key elements in the Class
15 EA. Paragraph 14, it goes through and says:

16 "This will provide a planning process
17 which applies to all projects. The
18 planning process addresses matters such
19 as consideration and analysis of
20 alternatives, public consultation..."

21 And I guess the --

22 THE CHAIRMAN: But regardless of whether
23 it is a Class EA or an individual EA you are still
24 bound by the legislation; aren't you, you are still
25 bound by Section 5(3)?

1 MR. HANNA: No question about that, Mr.
2 Chairman. I don't think -- there is no question at all
3 in that respect.

4 I think the point is, is that with the
5 Class EA we are talking about which elements are
6 treated generically and which elements should be
7 treated specifically. The timber management plan will
8 deal with those issues that are specific, the Class EA
9 will deal with matters that are generic. Just to give
10 you an example, the matter of alternatives to.

11 It's my understanding that one of the
12 reasons we are going through this Class EA process is
13 so we don't have to go back through each timber
14 management plan and undertake alternatives to analysis.

15 And this particular paragraph is making
16 suggestions as to what elements shall be dealt with in
17 this particular process, this hearing process; and the
18 reason for this line of questioning, it flows out of an
19 issue that I was going to address with the Board in
20 this particular case, and that is something regarding
21 the purpose that's still under consideration by the
22 parties at the present time and...

23 THE CHAIRMAN: What do you mean the
24 purpose? Are we going back to the forest estate and
25 timber management planning?

1 MR. HANNA: No, Mr. Chairman. In Panel
2 15 I believe there was a matter raised whether or not
3 the Board had the scope authority to modify the purpose
4 of the undertaking, and I believe at that time
5 direction was given particularly to myself to provide
6 some sort of commentary to that on the parties and see
7 if we can get a resolution of that outside of the
8 hearing.

9 THE CHAIRMAN: Well, I think we better
10 review the transcripts as to what the Board indicated
11 at that time before we respond now.

12 MR. HANNA: Mr. Chairman, for the benefit
13 of the Board, I have that reference and if you wish I
14 can provide that. I don't have that right at this
15 time, but I will certainly make the reference available
16 to the Board to assist you in finding that.

17 THE CHAIRMAN: Okay.

18 MR. HANNA: But the question that I am
19 raising here is: When we are looking at this
20 assessment of alternatives to - well, the evidence of
21 this panel - what in fact is on the table that is being
22 evaluated through this assessment.

23 It is my understanding that as a result
24 of this panel's evidence, presuming that the Board does
25 accept it, a decision will be made in terms of whether

1 the proposed undertaking is the preferred alternative.
2 That's one of the purposes I see of this particular
3 panel's evidence. Also I believe, and in fact it is
4 actually mentioned in the Class EA itself, I can give
5 you...

6 MR. CASSIDY: While he is looking for
7 that, Mr. Chairman, I think I can provide you with that
8 transcript reference that Mr. Hanna provided me
9 earlier.

10 I have not confirmed this, but he told me
11 it was Volume 150, page 25849 and he also provided 150,
12 page 25859. I have not confirmed that, but that's what
13 he told me earlier.

14 MR. HANNA: Thank you, Mr. Cassidy.

15 I'm looking at page 16 of the Class EA
16 and I'm reading from lines 32, it says:

17 "Furthermore, the class environmental
18 assessment approach has the added
19 advantage of allowing matters such
20 as the purpose of the undertaking, the
21 rationale for the undertaking and
22 alternatives to the undertaking, which
23 are the same for all management units, to
24 be dealt with on a generic basis."

25 And I believe that paragraph 14 is also

1 trying to deal with that issue also. And the purpose
2 of the question or this line of enquiry that we are
3 suggesting for paragraph 14 is to explore which
4 elements should be part of this assessment in terms of
5 the rationale and alternatives to and which parts
6 should be dealt with on an individual plan basis. So
7 that's the line of enquiry that we are looking at.

8 MR. FREIDIN: Mr. Chairman, if I might, I
9 think I would ask you during a break this evening to
10 look at the transcript references that Mr. Hanna
11 referred to so that you could come back and hear
12 submissions, first of all, to indicate whether you wish
13 to entertain this question that Mr. Hanna has raised
14 because, if you do, then I have a suggestion as to when
15 and where and how that issue might most appropriately
16 be dealt with; it certainly would not include the
17 suggestion that it be dealt with this evening.

18 I do not accept the interpretation that
19 Mr. Hanna has put on that phrase that he has cited. I
20 would leave to argument what that particular clause
21 means, I just don't accept Mr. Hanna's interpretation
22 of the implication of what that statement is.

23 I don't in any way accept the suggestion
24 that the Ministry is suggesting that the purpose is
25 something that the Board that can change; the purpose

1 is something that the proponent identifies and, in my
2 respectful submission, it will be my respectful
3 submission, if this matter does get to legal
4 submissions, it will be that the Board has no
5 jurisdiction to change the purpose.

6 THE CHAIRMAN: All right. You are going
7 to rely, I take it, on the Court of Appeal decision in
8 the first Hydro Southwest case?

9 MR. FREIDIN: I will rely on a number of
10 cases and I would probably more strongly rely on
11 statutory interpretation.

12 MR. HANNA: Mr. Chairman, just for the
13 clarification of the Board. It was my understanding as
14 a result of the original discussion, when this matter
15 came up that I was instructed to try to deal with this
16 among the parties before we brought it before the Board
17 and that's the reason why I have not forwarded that
18 correspondence to the Board, but it certainly sounds
19 like we are not going to be able to deal with it
20 outside of the hearing and, therefore, I am certainly
21 prepared to forward to you at least the submission that
22 has been circulated to the parties so far.

23 THE CHAIRMAN: I think what we will do is
24 we will follow Mr. Freidin's suggestion, we will review
25 the transcript to reacquaint ourselves with the issue,

1 it has been some time; secondly, if there is
2 disagreement between yourself and Mr. Freidin on that
3 issue, then we will probably require formal submissions
4 from the parties.

5 And the reason is, is that this is a
6 fairly important jurisdictional question which,
7 frankly, we should probably get to soon as opposed to
8 the end of the case when, depending on how we would
9 decide it at that point, it is too late in terms of the
10 evidence. So that it is one that should be decided
11 fairly soon up front.

12 MR. HANNA: I believe those were your
13 words from the last time, and I certainly concur with
14 that, Mr. Chairman.

15 THE CHAIRMAN: Right. I can't remember
16 my words, but I probably felt the same then as I feel
17 now, it is something we should deal with soon.

18 ---Discussion off the record

19 THE CHAIRMAN: Okay. Apart from that,
20 Mr. Hanna, we don't have any further comments on your
21 statement of issues and we will probably get to this
22 other matter you just raised prior to having to deal
23 with Panel 17 formally, in any event.

24 Do you have anything further, Mr.
25 Freidin?

1 MR. FREIDIN: Yes. I have some questions
2 I would like to have clarified, as has been the
3 practice in the other sessions, but perhaps I should
4 bring to the Board's attention a position of the
5 Ministry of Natural Resources on a legal matter which,
6 in my view, does have ramifications for the scope of
7 the evidence and the cross-examination of Panel 17.

8 I refer specifically to the statements of
9 issue filed by the Nishnawbe-Aski Nation and Grand
10 Council Treaty No. 3. In their statements of issue
11 they have raised questions, and perhaps I could refer
12 you to Nishnawbe-Aski Nation, it is basically one
13 paragraph that they refer to and that's paragraph 3
14 where they raise the question as to why the issue of
15 allocation or licensing is not being addressed by the
16 proponent.

17 You will note that paragraph 3, the
18 reference says:

19 "The activities of the undertaking as
20 proposed by MNR do not include the
21 activity of allocation of the resource.
22 Allocation is, however, an important part
23 of the management system particularly for
24 native communities which rely upon the
25 forest for such things as saw logs and

1 fuelwood."

2 Similar issues have been raised by Treaty
3 No. 3 when they refer to alternatives or why things
4 such as privately owned forests have not been
5 considered, smaller sized management agreements, and a
6 number of other matters which I could identify more
7 specifically but all which fall, in my respectful
8 submission, into the category of allocation or
9 licensing.

10 I have advised Mr. Colborne that I was
11 going to raise this matter just before we began - and I
12 am not suggesting that we deal with this matter today,
13 for reasons I will indicate in a moment - but I can in
14 a very brief way indicate to you that the Ministry's
15 position is that the Board does not have the
16 jurisdiction to deal with the issue of allocation of
17 licensing. That submission is based on Ontario
18 regulation 205 for '87 promulgated pursuant to the
19 Environmental Assessment Act, Section 9.

20 THE CHAIRMAN: Just a second, Ontario reg
21 what?

22 MR. FREIDIN: 205 for '87, Section 9 and
23 I will just read it to you, it is very short.

24 "The undertaking of making a loan, giving
25 a grant, giving a guarantee of debts or

1 issuing or granting a license, permit,
2 approval, permission or consent is exempt
3 from the provisions of subsection 5,
4 subparagraph 1 of the Act."

5 I will file the regulation or the
6 appropriate portion of that regulation with you. I
7 will provide that to you. I also don't always find
8 comfort in documents issued by the Environmental
9 Assessment Branch --

10 THE CHAIRMAN: Just going back to that
11 discussion you had just for a moment. In your view, if
12 you are indicating that the Board does not have the
13 jurisdiction to deal with licensing, issuing permits,
14 et cetera, for allocation of the resources, what about
15 the converse of that; does the Board have the
16 jurisdiction to prevent the issuance of a licence or
17 permit?

18 MR. FREIDIN: My respectful submission is
19 that it does not.

20 THE CHAIRMAN: And if it feels on
21 environmental grounds within the area of the
22 undertaking that certain activities should not take
23 place in a particular location or locale, are you
24 suggesting that the Board could not as part of its
25 approval indicate that in its view, because of the

1 environmental impacts that it envisages with respect to
2 a certain activity, whether it is the construction of a
3 road or harvesting or something like that, it should
4 not be allowed in this place, you are saying we do not
5 have that jurisdiction?

6 MR. FREIDIN: No, I'm not saying that.
7 I'm saying that the Environmental Assessment Act
8 contemplates the review of activities, in particular
9 this environmental assessment is in fact asking for
10 approval of the activity of timber management as
11 defined, that this Board can --

12 THE CHAIRMAN: What follow those
13 activities in timber management, the basic four.

14 MR. FREIDIN: The basic four.

15 THE CHAIRMAN: Harvesting, access, et
16 cetera.

17 MR. FREIDIN: Right. If you find that
18 some activity out there in the forest should not take
19 place for environmental reasons--

20 THE CHAIRMAN: Right.

21 MR. FREIDIN: --then you can say so and
22 so state in a term or condition.

23 THE CHAIRMAN: Right.

24 MR. FREIDIN: That will have an effect--

25 THE CHAIRMAN: Well, that will have an

1 effect --

2 MR. FREIDIN: --on what a licensee might
3 be able to do.

4 THE CHAIRMAN: Right.

5 MR. FREIDIN: The issue which has been
6 raised, as I understand it, by Nishnawbe-Aski Nation
7 and Treaty No. 3 is: Who should be allowed to have the
8 licence, who should reap the benefits and in what
9 quantity and in what distribution.

10 THE CHAIRMAN: All right.

11 MR. FREIDIN: As a result of those
12 undertakings. That is a clear distinction. So my
13 answer to your second question is no, you are not
14 restricted.

15 I was going to also provide to you a copy
16 of an October, 1976 EA update issued by the Ministry of
17 the Environment which basically is an interpretation
18 bulletin which comments in part -- or comments on the
19 regulation of the predecessor of the regulation and the
20 same section, Section 9.

21 And again, I will just read it to you.
22 It repeats the section, it says:

23 "The general intention is not to regulate
24 these activities; i.e., the granting of a
25 licence, et cetera, but rather to apply

1 the Act to the undertakings which they
2 facilitate. If such undertakings are
3 environmentally significant..." so I
4 think that answers both of the questions you have
5 asked.

6 "Exceptions to this general policy
7 will be dealt with as that they arise by
8 means of further regulations."

9 Now, I raise this matter now, Mr.
10 Chairman, Mr. Colborne has indicated expectedly that he
11 has concern about the position to be taken or at least
12 he wishes to consider the position being taken.

13 I agree that time should be provided. My
14 arguments basically are probably no more or no less
15 than what I have already given you. I'm going to
16 provide copies of the documents that I have preferred
17 to to the other parties and if the matter is to be
18 dealt with I would suggest, subject to the availability
19 of all counsel that would like to make submissions on
20 this, to be dealt with next Friday.

21 But, again, I have not raised this matter
22 specifically with all counsel, I don't know whether
23 they are all available. It's an issue which obviously
24 could have some ramifications regarding the proper
25 scope of the evidence in Panel No. 17 and particularly

1 the cross-examination in Panel No. 17.

2 So I will provide copies of those
3 documents to the Board and to the other parties. I
4 leave it to you as to whether -- those are my
5 suggestions how to deal with the matter. If you want
6 to hear some submissions or comments from other parties
7 on how that would best be dealt with, I leave that to
8 you.

9 THE CHAIRMAN: Well, I think essentially
10 the first thing you should do is distribute the
11 material that you are intending to distribute, the
12 other parties can then advise the Board whether they
13 want to formally raise it as an issue.

14 It may well be after they have seen your
15 material that they will concede the point; if not, then
16 it will have to be argued before us and we will settle
17 it.

18 As to the date of settling it on the 8th,
19 I'm not sure about that. The Board I think, speaking
20 for myself, has made some other commitments on that
21 date since we are not going to be sitting with Dean
22 Baskerville that particular day.

23 It probably is an issue that can be dealt
24 with not at great length and perhaps in the evening of
25 one of the sessions in the near future. I don't

1 anticipate with Dean Baskerville starting I believe at
2 nine o'clock in the morning we are going to be going
3 beyond five per day, and it may be that we can deal on
4 one of those days in Toronto for a half hour or
5 something following one of those sessions.

6 MR. FREIDIN: Fine.

7 THE CHAIRMAN: If it's necessary.

8 MR. FREIDIN: Well, then perhaps --

9 MS. KLEER: Can I seek clarification. So
10 then you are suggesting that if it can be dealt
11 beforehand by agreeing.

12 THE CHAIRMAN: Yes. If you get the
13 material and you are persuaded by Mr. Freidin's powers
14 of persuasion that his position is correct, then
15 obviously there is nothing for us to decide.

16 MS. KLEER: Okay.

17 THE CHAIRMAN: If the converse is true,
18 then we will have to set a time. Okay.

19 MS. KLEER: Thank you.

20 MR. FREIDIN: Mr. Chairman, I will just
21 provide this material to you. I don't think it needs
22 an exhibit number. If we have to argue the matter,
23 then perhaps that would be appropriate. (handed)

24 THE CHAIRMAN: Okay. The Board at some
25 time also owes the parties a ruling or direction

1 regarding the jurisdiction of the Board to amend
2 documents that you will recall we argued, or
3 submissions were made before the Board a few days ago.
4 We will be forthcoming with that ruling in the near
5 future, so that you can prepare your conditions of
6 approval accordingly.

7 Do you have anything further, Mr.
8 Freidin?

9 MR. FREIDIN: Yes. In relation to OFAH,
10 paragraph No. 4, they ask: Are there other reasonable
11 formulations of the do nothing alternative.

12 I would like to be quite frank. I do not
13 understand the question and I would ask Mr. Hanna: Are
14 there other reasonable formulations that you believe
15 should have been considered and evaluated and, if so,
16 could you advise us what they are so that we can
17 consider our evidence in relation to them.

18 THE CHAIRMAN: Well, do nothing to the
19 Board meant nothing, but maybe it means something else.

20 MR. FREIDIN: I would like that
21 clarification, if I could.

22 MR. HANNA: Mr. Chairman, again we are
23 entering into a field of basically environmental
24 planning and what the do nothing alternative is
25 designed to deal with. By the do nothing, in this

1 particular case, is if the Board did not approve the
2 undertaking, what the consequences might be.

3 THE CHAIRMAN: Well, if the Board did not
4 approve the undertaking, as the Board understands what
5 has occurred, all of the activities are being carried
6 on pursuant to an exemption, that exemption is awaiting
7 a decision of the Board.

8 Presuming that the Board denied approval
9 to the application, without spending a lot of time
10 thinking about it, it would seem to the Board that the
11 activities would no longer be legal and could not be
12 carried on and the government presumably would be faced
13 with an interesting impasse for which it likely would
14 probably try to address either with a further exemption
15 or some further disposition, either referring it to
16 another board for another hearing or whatever.

17 There are, of course, appeal mechanisms
18 from this Board's decision to Cabinet and, of course,
19 the Cabinet can deal with it as they see fit as well,
20 but presumably that is the alternatives.

21 If the Board denies the application
22 instantaneously, in the Board's understanding, all
23 activities cease until something else happens; either
24 there is a reversal of the Board decision, there is a
25 further exemption, or the government takes further

1 action to ensure that activities can carry on in some
2 form. But the Board would be finished with it once it
3 renders its decision, and the problems emanating from
4 that decision fall on others to resolve.

5 MR. HANNA: Certainly I appreciate the
6 consequences in the way you have described them, Mr.
7 Chairman.

8 THE CHAIRMAN: Mr. Freidin, I haven't
9 given this a lot of thought, that is just an
10 off-the-cuff opinion on the way this application has
11 been structured before this Board. On reflection that
12 may not be the case, but that is my off-the-cuff
13 assessment.

14 MR. FREIDIN: Well, Mr. Chairman, I think
15 that the jurisprudence in relation to environmental
16 assessment has indicated that the proponent should
17 indicate the consequences of the null alternative which
18 is the undertaking just doesn't take place, and we have
19 done that, and we have done that at a level and with a
20 level of detail which we think is sufficient having
21 regard to the reason you have to have a null
22 alternative in the first place.

23 I hear Mr. Hanna saying that it's the
24 null alternative from an environmental planning point
25 of view, and am I to understand now that he is saying

1 that there should be a null alternative other than the
2 null alternative referred to in the jurisprudence, the
3 legal kind of null alternative which proponents should
4 deal with and, if so, perhaps he could give me just
5 some idea of what that -- I still don't understand if
6 there is a difference and whether I should be concerned
7 about figuring out what my answer to this question is.

8 THE CHAIRMAN: No, I understood --
9 forgive me, Mr. Freidin, but I understood what he meant
10 was--

11 MR. CASSIDY: The no can do alternative.

12 THE CHAIRMAN: --you have dealt with the
13 alternatives in terms of the activities of doing
14 nothing, but his concern was: What happens if the
15 application itself is denied.

16 MR. FREIDIN: Oh well --

17 THE CHAIRMAN: That is the one I tried to
18 address very briefly and superficially. Is that not
19 what you just stated to us, Mr. Hanna?

20 MR. HANNA: Yes, Mr. Chairman. I guess
21 the situation in my understanding, again I'm not going
22 from -- I appreciate the jurisprudence, Mr. Freidin
23 probably appreciates much better than I, but I have
24 some knowledge of that. It was not from that point of
25 view that I was coming from it; it was from the point

1 of view, as I understand it, I'm coming at it from a
2 planning perspective. One of the considerations the
3 Board would like, I believe, to consider in its
4 decision is: If you don't give approval to the
5 undertaking, what are the consequences of that denial
6 in terms of the --

7 THE CHAIRMAN: We don't deal with that.

8 MR. MARTEL: It doesn't say that.

9 MS. SEABORN: Yes. Mr. Chairman, perhaps
10 I can help. As I see it, it would be a decision of the
11 Minister of the Environment. At that stage the Board
12 would come forward with a decision that would say: We
13 do not approve this undertaking, the Minister of the
14 Environment can recommend to Cabinet that that decision
15 be accepted and then make the hard decision as to
16 whether or not the activities can continue under an
17 exemption order or whether all timber management
18 activities have to cease in the area of the
19 undertaking.

20 THE CHAIRMAN: But the only thing I was
21 saying and adding to that, Ms. Seaborn, is my
22 recollection of the way the exemption order was framed
23 that upon a decision of this Board the exemption order
24 is no longer effective.

25 MS. SEABORN: That may be true.

1 THE CHAIRMAN: And if the decision of the
2 Board is denial, there is no approval under the
3 exemption order to carry on.

4 MS. SEABORN: That's correct.

5 THE CHAIRMAN: There would have to be a
6 further exemption order or further action on the part
7 of the Minister or Cabinet.

8 MS. SEABORN: That was my only point,
9 that the Minister of the Environment would then at that
10 stage have to decide whether to issue a new exemption
11 order or activities would be permitted.

12 MR. HANNA: I appreciate that.

13 THE CHAIRMAN: And again, Mr. Hanna, the
14 Board does not consider the hereafter, in the sense
15 that the Board will render its decision on the evidence
16 based on what it considers appropriate to do on the
17 evidence; if what it considers appropriate to do is to
18 deny the application, then --

19 MR. CASSIDY: It sounds to me like we
20 should have Mr. Bradley take the witness stand to
21 discuss the hearing.

22 THE CHAIRMAN: Then what happens after
23 that is out of our hands, it's in the hands of others.

24 MR. CASSIDY: Call Mr. Bradley.

25 MR. HANNA: I can certainly understand

1 the point that is being made here by my other friends
2 here and yourself, Mr. Chairman. The point is because
3 it's a Class EA it's a slightly different type of
4 context, in my view; and, that is, that you can perhaps
5 not approve of the planning process, and this comes
6 back to this question of what is the undertaking, what
7 is the Board being asked to approve, and the question
8 is: Is the Board being asked to approve every timber
9 management plan in this province, or is the Board being
10 asked to approve the planning process.

11 It's a very different type of approval
12 than the Board would be faced with in an individual EA.
13 In an individual EA, I concur fully with what you have
14 said, that you would say: You cannot go forward with
15 forest management any longer or timber management any
16 longer in this province, you can no longer harvest,
17 access, renew or tend the forest, everything stops;
18 but because this is a Class Environmental Assessment,
19 is that in fact what this Board is being asked to
20 approve, or is this Board in fact being asked to
21 approve a planning process?

22 MR. FREIDIN: Let me answer that.
23 Clearly and unequivocally the Ministry of Natural
24 Resources is asking for approval of the undertaking of
25 timber management; i.e., the activities of access,

1 harvest, renewal and maintenance. It is customary in
2 class environmental Assessments that the proponent put
3 forward a planning process in relation to those
4 activities; we have done that. We anticipate that the
5 terms and conditions will address what the essential
6 ingredients of that planning process should be.

7 We are not asking for approval in the
8 same sense of the planning process.

9 THE CHAIRMAN: State that last line
10 again; you are not asking for approval of the planning
11 process...?

12 MR. FREIDIN: We are asking for approval
13 to carry out the activities.

14 THE CHAIRMAN: Right.

15 MR. FREIDIN: We have to ---

16 THE CHAIRMAN: In terms of a planning
17 process; is that not correct?

18 MR. FREIDIN: No. Well, I'm not sure
19 what you mean by 'in terms of a planning process'. We
20 have to, as the proponent in a class environmental
21 assessment, in order to get approval for the
22 activities - that is what the approval is for - we have
23 to put forward a planning process which will be used in
24 planning for those activities.

25 THE CHAIRMAN: Which will be the

1 individual timber management plans in various units; is
2 that not right?

3 MR. FREIDIN: The planning process that
4 will be used to prepare the individual timber
5 management plans exactly.

6 THE CHAIRMAN: Right.

7 MR. FREIDIN: So to the extent that we
8 are putting forward our suggestion as to what a
9 reasonable planning process should be, realizing that
10 the Board will impose the essential ingredients in
11 terms or conditions, I suppose in that vein one might
12 say that we are seeking approval.

13 THE CHAIRMAN: Right. And that we are
14 not approving any plans to date that have already
15 received approval, nor in the future would we be
16 approving any individual plans that might be put
17 forward; those plans will have to conform with the
18 elements of approval outlined in the Class EA.

19 MR. FREIDIN: That is correct. And the
20 timber management plans that are prepared will in fact
21 be -- the activities approved in them will take place
22 in accordance with your approval, save and except for
23 those areas which become the subject matter of a
24 bump-up and all the ramifications of that.

25 THE CHAIRMAN: And that will require a

1 separate EA, et cetera, et cetera.

2 MR. HANNA: Well, Mr. Chairman, my
3 understanding of having currently been involved with
4 the class environmental assessment for municipal
5 projects, in fact what is happening in that particular
6 Class EA is that individual projects have come forward,
7 environmental study reports, the terminology that is
8 used within that particular environmental assessment,
9 those are brought forward and on the basis of that it
10 is decided whether or not to carry forward with that
11 activity. That's the planning process that's been
12 developed in that exercise.

13 In this respect, the reason I raise this
14 particular question was that, what are the consequences
15 of that do nothing alternative if this planning process
16 is not being approved?

17 In other words, if the Board doesn't
18 approve this planning process, what would be the
19 consequences. And I think that in this context I see
20 the Board then being able to evaluate the advantages
21 and disadvantages.

22 THE CHAIRMAN: Well, I think I went back
23 to that, I think I have already explained that. As the
24 Board understands it, the results of that would be that
25 any of the plans which are at this point encompassing

1 the activities that we are talking about, are at this
2 point exempt from the Environmental Assessment Act by
3 virtue of an exemption and that exemption would in fact
4 no longer be effective should we deny approval for this
5 undertaking to carry out those named activities.

6 Is that not your understanding, Mr.
7 Freidin?

8 MR. FREIDIN: Well, I must say I was...

9 THE CHAIRMAN: Or did I get it wrong?

10 MR. FREIDIN: I was thinking about
11 something else and didn't catch the whole part of
12 everything you said.

13 You have my position. I have indicated
14 what I believe you are here to do; you are not here to
15 approve old plans.

16 THE CHAIRMAN: No, we know that.

17 MR. FREIDIN: All right.

18 THE CHAIRMAN: And we were not suggesting
19 we were.

20 MS. SEABORN: I think, Mr. Chairman, you
21 did repeat your same comments that you made earlier and
22 just in addition to the earlier comments, one thing I
23 should have mentioned as well is that one ramification
24 of non-approval would be that on the 99 management
25 units that we have there could then be an argument made

1 that individual environmental assessments that are
2 particular to those management units would then have to
3 be prepared.

4 THE CHAIRMAN: In the future. In the
5 future because it would not be covered by an approved
6 Class EA.

7 MS. SEABORN: Exactly.

8 THE CHAIRMAN: That's right.

9 MS. SEABORN: I am not sure if that helps
10 Mr. Hanna in terms of --

11 THE CHAIRMAN: But the further argument
12 to that, Ms. Seaborn, is: Is that until those
13 individual environmental assessments were approved, no
14 activity could take place either unless exempted.

15 MS. SEABORN: That's right.

16 THE CHAIRMAN: Right, because they are
17 caught by the Act.

18 MR. FREIDIN: Mr. Chairman, as I
19 understand Mr. Hanna as well, he is saying: What
20 happens if the planning process as put forward by the
21 proponent is not approved, what are the consequences?

22 We don't know obviously what planning
23 process may eventually come out of this hearing, so it
24 is certainly a question which is absolutely impossible
25 of even addressing at this moment. It may very well be

1 that suggestions will be made that the proponent's
2 suggestion for a planning process be changed by the
3 Board. Those issues will arise during the case of the
4 other parties, and we might well deal in reply evidence
5 with the consequences of adopting some of the
6 suggestions made as to how our suggestions should be
7 changed. That's how I envisage this matter would work.

8 THE CHAIRMAN: But I think he was going
9 the one step further and saying: Suppose we deny
10 everything.

11 MR. CASSIDY: I was in jest a few minutes
12 ago when I suggested we call Mr. Bradley as a witness,
13 but we are talking about the hereafter and after a
14 Board decision of that effect.

15 And if we are talking about what you are
16 going to ask these panel members when they get up on
17 the stand, I suspect - again without having a crystal
18 ball - they are got going to have the foggiest idea of
19 what the Ministry of the Environment is going to do if
20 the Board's decision is: Application denied.

21 And, therefore, I don't think, with the
22 greatest respect to Mr. Hanna, it is proper to raise
23 this is Panel 17 cross-examination.

24 THE CHAIRMAN: Well, I don't think it is
25 proper for Mr. Bradley to be called either because I

1 would suggest that that may be undue influence on what
2 the Board should do.

3 MR. CASSIDY: Well, that was the part I
4 was talking about in jest.

5 THE CHAIRMAN: Our position is simply
6 this: It is our jurisdiction now. We will pass the
7 mantel at whatever time that we render a decision and
8 then whoever has the jurisdiction under the Act to deal
9 with it after us whether it is on appeal, the Minister,
10 whatever, they carry on and exercise their own
11 jurisdiction.

12 I think it would be an unwarranted
13 interference with our jurisdiction to speculate prior
14 to our rendering any decision on this application as to
15 what somebody else would do should we follow one course
16 of action or another. I think that's inappropriate.

17 MR. FREIDIN: Thank you, Mr. Chairman.

18 MR. HANNA: Mr. Chairman, maybe I can get
19 your direction on this. I think Ms. Seaborn captured
20 the essence of what I was driving at. The do nothing
21 in this particular case is: What if the planning
22 process is denied, not the activity itself, and what
23 consequences that has in terms of --

24 THE CHAIRMAN: But what is being asked to
25 be approved are the activities. They have to be

1 approved within the context presumably of some process,
2 there has to be certain things done before you go out
3 and build a road--

4 MR. HANNA: Correct.

5 THE CHAIRMAN: --or harvest a particular
6 area, and that we have been loosely describing as a
7 process to investigate and look at the impacts,
8 positive and negative, before the decision is made to
9 proceed with that activity.

10 And, to that extent, the Board is looking
11 at what that process might be, but what we would be
12 approving are the activities of the four items.

13 MR. HANNA: Mr. Chairman, one of the
14 issues that has been long standing with respect to this
15 application is whether or not this is actually an
16 appropriate undertaking for a Class EA, but is this
17 issue going to be brought before this Board, that's the
18 point that I guess is coming out, is that I think the
19 Board - I guess what I am suggesting through this
20 particular statement - is if the Board denies this as a
21 class environmental assessment, what are the
22 consequences - which I would say is a do nothing- don't
23 follow through with the class environmental assessment
24 approach and you go to an individual environmental
25 assessment approach to deal with it, what are the

1 consequences of that?

2 I would think that the Board, if it was
3 going to consider that in terms of denying this
4 application, would certainly want to have some
5 understanding of what the implications would be if each
6 timber management plan was dealt with as an individual
7 EA.

8 MS. SEABORN: Mr. Hanna, all I was
9 suggesting in my comments is that I am not sure that's
10 a question you want to pose to witnesses. I think that
11 all that may well be subject to final argument at the
12 end of the hearing and when I outlined those options
13 those were the options in my mind I can see my client
14 having if there was an approval.

15 I am not giving evidence on that, just on
16 my knowledge of environmental assessment work. There
17 are various options that the government would have at
18 that point and none of us, as you pointed out, Mr.
19 Chairman, can decide now or speculate now what the
20 government may do in the event that the Board doesn't
21 approve this. I am not sure how the witnesses would be
22 able to respond to that question.

23 MR. HANNA: But is this not the catch 22
24 of the do nothing alternative. I don't want to go on,
25 but that clearly is one of the problems, is the do

1 nothing alternative doing nothing or what will happen
2 in the event that the application is denied.

3 THE CHAIRMAN: No, I think those are
4 totally two different alternatives. One is a question
5 in essence of law in the sense of what happens upon a
6 denial of an application before the Board; the second
7 question, which is normally the way a do nothing issue
8 arises in the context of an environmental assessment,
9 is with respect to the activities for which approval is
10 sought.

11 In other words, if the activity is
12 building a road, what is the impact of not building a
13 road, not carrying out that activity.

14 MR. HANNA: But I would suggest to you
15 the point you are dealing with is the hereafter. To
16 give you an example, if you don't build the road, what
17 adjustments will be made to deal with the fact that you
18 don't have a road there any more; that is the do
19 nothing alternative in that respect.

20 THE CHAIRMAN: The do nothing alternative
21 in that respect, using your jargon, is whatever the law
22 permits.

23 MR. HANNA: Right.

24 THE CHAIRMAN: At that point in time and
25 if what the law permits is, is that any activity will

1 have to be dealt with under an individual EA before a
2 plan can be approved, then that's the answer.

3 In other words, you don't get a Class EA
4 approval, you don't get authority to carry out the
5 activity pursuant to the Class EA, presuming that this
6 application is denied, what's your alternative at that
7 point? Your alternative is, if you want to carry out
8 the activity, to perhaps go under a different process
9 at that point in time, an individual EA or,
10 alternatively, the Minister and the Cabinet have other
11 options available to them as we have already discussed.

12 MR. HANNA: Well, Mr. Chairman, perhaps I
13 will leave this subject. The last thing I would say
14 simply is that I am anticipating getting down to the
15 point of argument and pointing to you perhaps an
16 argument that these timber management plans should be
17 dealt with on an individual EA basis and the Board
18 being faced with the difficulty of deciding whether or
19 not they should deny the application for that reason;
20 and, if they do, what the consequences of that might be
21 in terms of economic and social and whatever other
22 aspects --

23 THE CHAIRMAN: All right. But that may
24 properly be a matter for argument and submissions
25 likely at the end of the case, certainly not for a

1 witness panel.

2 MR. HANNA: Fine, Mr. Chairman.

3 MR. FREIDIN: In relation to Forests for
4 Tomorrow, they indicated that they would not be here.
5 I just want to go on the record that I have a number of
6 questions that arise out of their statement of issues,
7 basically the very first three points that they have.
8 No. 1:

9 "Proponent's failure to consider
10 other viable alternative means in
11 carrying out the purpose of the
12 undertaking, including alternative
13 approaches..." I assume what is meant
14 here:

15 "...to integrated resource management."
16 I intend to be asking Forests for
17 Tomorrow whether there is some other viable
18 alternatives that they have in mind and will be
19 suggesting to the witnesses. I assume, Mr. Chairman,
20 that's a fair question to ask as a result of scoping.
21 Secondly,

22 "The Proponent's characterization of the
23 constituent elements of timber management
24 is an issue of cross-examination."
25 I don't understand what is meant by that

1 and what the cross-examination is intended to be and I
2 intend to seek clarification of that.

3 "There is an indication that the basis
4 for the conclusions of low, medium and
5 high impacts assigned to various
6 alternatives will be the subject matter
7 of cross-examination." I want some
8 clarification of that.

9 In terms of the last item on their first
10 page, criteria for granting bump-up requests, I think
11 the Ministry's position is clearly on the record now.
12 The Ministry of the Environment does not propose to
13 indicate the basis on which the Minister of the
14 Environment should exercise his discretion in granting
15 bump-up requests other than to exercise it reasonably.

16 In relation to NOTOA - I don't think they
17 are here - I will be asking some clarification as to
18 what Mr. Edwards meant by the term 'intellectually
19 honest'. He said that:

20 "The Ministry's approach to timber
21 management planning process isn't
22 intellectually honest and whether that
23 approach..." Anyway, I will just leave
24 it.

25 Nishnawbe-Aski Nation. Can I please have

1 one moment, it may not be necessary to even raise this
2 one.

3 ---Discussion off the record

4 MR. FREIDIN: I guess Additional Issues,
5 page No. 3:

6 "In our view..." it says, "...MNR has
7 failed to give any consideration to other
8 alternatives which would alter components
9 of their management system, including but
10 not limited to planning team makeup, use
11 of stakeholders..." et cetera.

12 I would like to know, is the reference to
13 the management system something different from the
14 planning process and, if so, what is it?

15 MS. KLEER: It is meant to be the same
16 thing.

17 MR. FREIDIN: Thank you. You also
18 indicate, Ms. Kleer, that you intend to cross-examine
19 on other alternatives. Can you give us any idea of
20 what those other alternatives might be so that we,
21 again, can be in a position to perhaps respond in some
22 sort of helpful way?

23 MS. KLEER: Well, the other alternatives
24 that we are talking about are not alternatives to the
25 undertaking, we are talking about alternatives to the

1 planning process as put forward. If you want further
2 details on that, I mean that's going to be part of
3 our --

4 THE CHAIRMAN: You mean amendments to
5 supposed conditions that might be attached?

6 MS. KLEER: Yes.

7 MR. FREIDIN: If I understand, are you
8 saying that those are changes you would want to the
9 planning process?

10 MS. KLEER: Insofar as they are changes
11 to the terms and conditions that would result in
12 changes to the planning process, yes, and it is
13 specifically with respect to native communities.

14 And what we will be doing or what we
15 intend to do, at least as I see it now - and I am not
16 going to be cross-examining on Panel 17 - I think the
17 intention was that we would put forward to you as best
18 we can at this time what we propose and ask for the
19 Ministry's comment on that; i.e., proposed alternatives
20 to how you intend to do your planning and compare that
21 to what we intend to put in for plans.

22 MR. FREIDIN: Mr. Chairman, I would
23 suggest that that was the clear direction of the
24 cross-examination of Mr. Hunter in Panel 15 when our
25 suggestion for the planning process was put forward.

1 It is not a proper subject matter to be
2 dealt with in Panel 17 but is, of course, proper to be
3 dealt with in their own case. I think we would be
4 revisiting, in effect, Panel 15. They want
5 alternatives --

6 THE CHAIRMAN: Well, it would be
7 revisiting, but I think they are seeking the opinion of
8 these witnesses as to a suggested change in the process
9 put forward by the Ministry.

10 MR. FREIDIN: But with respect, Mr.
11 Chairman, Panel 15 was the panel which was put forward
12 with the timber management planning experts to be asked
13 questions about it.

14 You will recall Mr. Hunter's
15 cross-examination specifically said: I am asking you
16 this question because what we want to have as a term or
17 condition is this, and he put to those witnesses what
18 the Nishnawbe-Aski Nation's suggestion was and an
19 outline of their case and said: What do you think, and
20 he went a certain way and there was a disagreement, he
21 said: Okay, and he went on to the next thing.

22 That is where that examination should
23 have taken place and that's where it did take place.
24 These people who are put up here are talking about
25 alternatives to the undertaking, they are not talking

1 about alternatives to the planning process.

2 THE CHAIRMAN: Ms. Kleer, there is some
3 merit in what Mr. Freidin is saying because these
4 witnesses are not here dealing with the process per se
5 as opposed to how the requirements of the Act were met
6 in terms of examining alternatives to and alternative
7 methods of carrying out the undertaking.

8 So you may be in a position of having to
9 wait to put forward your suggestions in your own case.

10 MS. KLEER: I guess our only point was
11 that if the MNR had proposed as an alternative that you
12 take out using the provincial guidelines, well that's
13 part of their planning process; and in the same regard,
14 other aspects would be part of their planning process
15 as well, and that was the intention of this additional
16 issue and, in fact, we don't intend to revisit and
17 repeat what was done in 15.

18 MR. FREIDIN: I think as long as there is
19 not a repeat and they are not really looking at
20 alternatives to the planning process, that's fine.

21 The comment or the alternative 2 that
22 does refer to with guidelines/without guidelines, that
23 will be addressed in evidence-in-chief and to that
24 extent, cross-examination--

25 THE CHAIRMAN: Would be proper.

1 MR. FREIDIN: --would be relevant.

2 THE CHAIRMAN: Okay.

3 MR. FREIDIN: In relation to Grand
4 Council Treaty No. 3, in relation to 2, subparagraph
5 (f) it says:

6 "Why were there no alternatives examined
7 which involved the merits of more
8 government as opposed to private
9 participation in management and vice
10 versa."

11 And just for purposes of clarification,
12 Mr. Colborne, can you advise whether you were referring
13 to participation in management planning in that context
14 or are you talking about who actually gets involved in
15 carrying out the activities?

16 MR. COLBORNE: I had in mind both.

17 MR. FREIDIN: All right. Well, to the
18 extent that it included who does it, you already have
19 my view on that and we will discuss how we deal with
20 that at a later time.

21 MR. COLBORNE: I heard the previous
22 discussion and I think I understood it, Mr. Chairman,
23 and I would plan my cross-examination with that in
24 mind.

25 THE CHAIRMAN: Very well.

1 MR. FREIDIN: In relation to page 2, item
2 No. 5, paragraph 4.1, which you will find on page 44 of
3 the witness statement, Mr. Chairman, I would ask for
4 some clarification as to what is meant by that
5 paragraph because I am not too sure. I don't
6 understand the point being made.

7 MR. COLBORNE: At page 44, the last point
8 on the page, percentage figures are stated 85 and 35,
9 83 and 34 in regard to manufacturing jobs and
10 manufacturing value added. I wanted that broken down
11 to exclude jobs that do not occur in the forest as
12 such.

13 I think I may just be, by saying that,
14 repeating what I said in the question, but I'm not
15 clear on why it would be so difficult to do that and
16 why that type of question would not be appropriate for
17 this particular panel.

18 My impression is that most of the
19 industrial jobs are in manufacturing plants and perhaps
20 even further down the manufacturing process, perhaps
21 plants which process a product which has already been
22 processed at least once at manufacturing plants.

23 The reason why I want to pursue that
24 point is that I want to get some better idea of what
25 the effect on my clients would be given this particular

1 alternative; that is, the timber management
2 alternative, on account of the fact that most of them
3 do not live and, therefore, do not have access to jobs
4 in manufacturing further down the line or perhaps you
5 describe it as up the line. That's the question.

6 MR. FREIDIN: So, in effect, you really
7 want to know what percentage -- see, this paragraph
8 dealt with manufacturing and value added and you are
9 talking about employment in the bush, is that the idea?

10 MR. COLBORNE: Yes.

11 MR. FREIDIN: You want figures on the
12 amount of employment of people who work in the forest
13 as cutters, skidder operators and that sort of thing as
14 opposed to in the plant doing manufacturing.

15 MR. COLBORNE: Yes. But is that what
16 manufacturing jobs means?

17 MR. FREIDIN: No, manufacturing jobs did
18 not include people in the bush. They will be people in
19 the mills.

20 MR. COLBORNE: Mr. Chairman, maybe this
21 is something Mr. Freidin and I can sort out. It may
22 better belong in an interrogatory. I don't want to
23 take up the time now.

24 THE CHAIRMAN: Okay. Well, have the
25 discussion and seek the clarification that you want.

1 In any event, it appears that the question based on the
2 evidence is probably appropriate. He just wants to
3 know how he can go about answering it.

4 MR. COLBORNE: Very well.

5 MR. FREIDIN: Okay. If I can do the same
6 thing with the next couple of points I had. In
7 relation to No. 7:

8 "Has there been any evaluation of the
9 comparable social and economic hardship
10 caused to Indian communities due to their
11 exclusion from their traditional lands
12 and resources by the actions of
13 the proponent."

14 I take it there is a suggestion in the
15 question that there have been actions of the proponent
16 which Treaty No. 3 are suggesting have excluded them
17 from their traditional lands and resources.

18 And, if that is so, could Mr. Colborne
19 provide some particulars as to the actions of the
20 proponent that are suggested have excluded them and in
21 what respect, how have they been excluded so that we
22 can deal with the question.

23 MR. COLBORNE: That will be the subject
24 of a great deal of my client's evidence, that it is the
25 Ministry of Natural Resources that has destroyed the

1 native economies and that the Ministry of Natural
2 Resources is the very specific source of a high
3 proportion of the problems within the native community,
4 the problem being that the Ministry of Natural Resources
5 has denied my clients access to the lands and resources
6 to which they say they have not only legal title, but a
7 general right to derive a benefit from.

8 THE CHAIRMAN: Well, that is a matter of
9 considerable, I won't say debate, but some of those
10 issues haven't been settled, and I am not sure that all
11 of those issues or any of those issues are going to be
12 settled before this Board either.

13 MR. COLBORNE: No.

14 THE CHAIRMAN: I mean, a lot of this is
15 before the courts, as you well know.

16 MR. COLBORNE: I don't agree, not as it
17 affects my client. I am not going to ask this Board to
18 be ruling on questions that are clearly beyond its
19 jurisdiction, but I will be at least attempting to
20 bring evidence that has to do with what I will be
21 arguing is exclusion from the benefit of resources of
22 my clients and their communities generally, which I
23 think is within the powers of this Board and relevant.

24 MR. FREIDIN: If I can just respond, Mr.
25 Chairman, to the extent that that would involve again

1 an allocation or licensing or distribution of benefits,
2 you have my submissions on that.

3 Are you suggesting, Mr. Colborne --

4 THE CHAIRMAN: Just a moment. I mean,
5 this is sort of -- particularly if Mr. Colborne
6 indicates that a good part of his case is going to deal
7 with this, does not that call for some kind of
8 determination as to who properly is entitled to the
9 resource before you can argue exclusion?

10 MR. COLBORNE: Doesn't your question, Mr.
11 Chairman, suggest that there is an onus of some kind?

12 THE CHAIRMAN: No, I'm suggesting that if
13 your clients are claiming entitlement to certain
14 resources - and that is an issue that I would suggest
15 is beyond the jurisdiction of this Board in terms of
16 determining - do not many of your concerns relate to
17 the fact of entitlement; in other words, does not the
18 question of who is entitled to the resource precede any
19 question of whether or not there has been an exclusion?

20 For instance, if it turns out as a result
21 of land claims or any other proceedings or negotiations
22 which are beyond the jurisdiction of this Board that
23 the Ministry is entitled to the resource, then doesn't
24 that colour whether or not they would be guilty of
25 excluding your clients from that resource?

1 MR. COLBORNE: If it had been the
2 evidence of the proponent that Indians did not have any
3 such entitlement, then I believe I would have to agree
4 with you, it would not be for me to bring forward
5 witnesses that would be attempting to persuade you that
6 their assertion was wrong, because that would be
7 putting the legal question of entitlement before you.

8 What I heard the proponent's witnesses to
9 say is that the Indians do have entitlement but they
10 don't know how much it has not been resolved, and I
11 think that the evidence being in that state it permits
12 me to call the kind of evidence that I have referred
13 to, but not to ask you to somehow quantify the level of
14 entitlement, that I will not be asking you to do, but I
15 would be proceeding on the basis that --

16 THE CHAIRMAN: Well, what would you be
17 asking us to do, okay? That is not what you would be
18 asking us to do, but what would you be asking us to do?

19 MR. COLBORNE: I would prefer not to
20 attempt to characterize it briefly at this time, if you
21 would grant me that indulgence, Mr. Chairman.

22 THE CHAIRMAN: Only to this extent, and I
23 I think you should give this some consideration, if
24 your cross-examination on this panel is going to be
25 relying to some extent on what you would be asking this

1 Board to do, and if we determine that what you are
2 asking us to do is clearly outside our jurisdiction,
3 then that line of questioning becomes somewhat
4 redundant or irrelevant--

5 MR. COLBORNE: Yes.

6 THE CHAIRMAN: --to what we can do about
7 it.

8 MR. COLBORNE: Yes.

9 THE CHAIRMAN: So it's a chicken and egg
10 type situation, you don't want to tell us at this point
11 what you are going to ask us to do, and yet you want to
12 be permitted to cross-examine in an area which you told
13 us might be beyond our jurisdiction if we so decide.
14 That is the dilemma.

15 MR. FREIDIN: Do I take it, Mr. Chairman,
16 that you are questioning some clarification as to what
17 Treaty No. 3 is asking so that you can determine what
18 may or may not be a relevant line of questioning?

19 THE CHAIRMAN: Well, it's hard for us to
20 decide whether this line of questioning is appropriate
21 for this panel based on what Mr. Colborne has said if
22 we don't know whether what he is asking as a result of
23 this questioning is within our jurisdiction.

24 MR. FREIDIN: I agree, Mr. Chairman, but
25 as I understand it, one of the purposes of the scoping

1 session is to get these sort of issues on the table so
2 you can scope the cross-examination.

3 THE CHAIRMAN: That is what I'm
4 suggesting. We can't make that determination without
5 really knowing what he's asking of us, to determine
6 whether or not it's relevant in the first place.

7 MR. FREIDIN: Right. And it might very
8 well be, I think two steps are required: I think Mr.
9 Colborne should be asked to advise the Board what it is
10 he's seeking, if it falls within the parameters of what
11 in the Ministry's position is beyond your jurisdiction,
12 then I assume we are going to have that issue dealt
13 with, and between the combination of the two, we will
14 be able to determine what is not appropriate scope or
15 is a proper scope for cross-examination.

16 But we can't achieve that purpose unless
17 we find out what it is Mr. Colborne wants.

18 THE CHAIRMAN: We are not attempting, Mr.
19 Colborne, to pry out of you in advance of you
20 presenting your evidence what your evidence is, but you
21 are embarking on an area that you yourself recognize is
22 in some state of evolvement.

23 MR. COLBORNE: Yes.

24 THE CHAIRMAN: And, consequently, what
25 you will be asking us to do as a result. Suppose that

1 your cross-examination is very effective and presumably
2 in the course of your own case you will be asking for
3 the Board to be persuaded to rule in a certain way in
4 accordance with the direction that your questioning is
5 taking.

6 Does it not depend to some extent though,
7 vis-a-vis your client, as to whether we have got the
8 jurisdiction to go in that direction?

9 MR. COLBORNE: Mr. Chairman, I'm quite
10 aware from previous occasions at this hearing when this
11 point has arisen that it is a matter of concern that at
12 the time when my evidence is called it will no doubt be
13 addressed, and I suggest that that is the more
14 appropriate time to address it rather than in
15 discussion of what I'm going to spend my half day or
16 less asking.

17 THE CHAIRMAN: Okay.

18 MR. COLBORNE: But I don't mean to leave
19 it right there, if you would let me --

20 THE CHAIRMAN: No, I think...

21 MR. COLBORNE: Because I know that this
22 is an issue, I would be cross-examining this panel in a
23 manner no differently than I would if I was
24 representing a community of persons who did not have
25 the entitlement claim but merely a community of persons

1 who lived in the forest and whom I could say, because I
2 know I can prove it, gain very little benefit from the
3 industrial operation going on around them.

4 THE CHAIRMAN: All right. I think for
5 the purpose of the scoping session the Board is going
6 to decide it in this fashion: Given the fact that you
7 are not going to be taking an excessive amount of time
8 in any event in your examination, the Board doesn't
9 feel that it will force the issue at this time and we
10 will allow you to present your submissions regarding
11 the Board's jurisdiction vis-a-vis your client at the
12 time you present your evidence.

13 And if you want to proceed with some
14 questions of this panel, they may not be able to answer
15 your questions or they may be unwilling to answer your
16 questions, but you can proceed with your
17 cross-examination on that basis.

18 In any event, if we should determine
19 later on that it's beyond our jurisdiction what you
20 want, the Board does not feel in this case that we will
21 have unduly wasted a great amount of time.

22 MR. FREIDIN: Mr. Chairman, you are
23 opening the door for Nishnawbe-Aski Nation to do the
24 same thing.

25 THE CHAIRMAN: Well --

1 MR. FREIDIN: In my respectful submission
2 either it's in or it's out. We have the opportunity to
3 deal with the issue before cross-examination starts on
4 Panel 17. I don't see that there is a reason not to
5 deal with it.

6 ---Discussion off the record

7 THE CHAIRMAN: Just a moment.

8 Yes, Mr. Colborne?

9 MR. COLBORNE: Just a brief point, Mr.
10 Chairman. I suggest that perhaps Mr. Freidin has found
11 something in our statement of issues that I didn't
12 intend to put there.

13 With the exception of 2(h) which is on
14 the first page, I did not intend to raise entitlement
15 or ownership issues in this statement of issues. So I
16 wonder if we are dealing with an issue which Mr.
17 Freidin has perceived but maybe on the basis of a
18 misreading of the intention of our statement of issues.

19 MR. FREIDIN: Mr. Colborne's submissions
20 on Item No. 7, if I heard him correctly, indicated that
21 he was in fact talking about the economic benefits that
22 accrue to various people as a result of the activities
23 which, in my respectful submission, falls squarely
24 within entitlement, allocation or licensing, whichever
25 way you want to cut it.

1 Let me just ask another question. When
2 he says that they have been excluded by the actions of
3 the proponent, are the actions of the proponent - let's
4 start here - are they the actions of timber management
5 that you are referring to as defined; access, harvest
6 renewal, and maintenance; not who does it, but the
7 actual activities and how they go about accommodating
8 the concerns of other people?

9 MR. COLBORNE: Mr. Chairman, maybe it's
10 the lateness of the hour, but I think that there are
11 two distinct questions; one of which is the one raised
12 by Mr. Freidin some time ago when he filed the excerpt
13 from the regulation and questioned whether allocation
14 decisions were properly within your jurisdiction.

15 The second one is the one I thought he
16 was raising a few minutes; and, that is, whether this
17 Board can properly hear evidence that really is more
18 tending towards questions of Indian rights to lands and
19 resources.

20 Now, insofar as that first question is
21 concerned, I thought that there was going to be
22 discussion and, if necessary, further submissions on
23 that. Is that...

24 MR. FREIDIN: I don't restrict my
25 comments to Indians' rights to land and resources, it's

1 raised by an Indian group.

2 THE CHAIRMAN: Well, Let's answer his
3 questions in order. With regard to the first
4 submission, yes, we understood that the parties would
5 consult amongst themselves; if they couldn't agree with
6 Mr. Freidin's position regarding licensing and
7 allocation, then it would be referred back to the
8 Board, okay. I thought that was the way we decided to
9 deal with that issue.

10 MR. COLBORNE: That is what I thought as
11 well, and I thought then that we were dealing with a
12 separate and second issue but, in Mr. Freidin's most
13 recent comments, it appears that he has the two -- that
14 he is dealing with them as one. And if they are one,
15 then has not this point been agreed in terms of
16 procedure?

17 MR. FREIDIN: I would be dealing with
18 them as one if actions of the proponent referred to
19 licensing or allocation. I don't know what the actions
20 are that Mr. Colborne is suggesting have been engaged
21 in by the proponent which have caused the exclusion
22 referred to. That is why want clarification on it.

23 MR. COLBORNE: I have no hesitation on
24 saying that they include licensing and allocation.

25 MR. FREIDIN: And what else?

1 MR. COLBORNE: But are not restricted to
2 that.

3 MR. FREIDIN: And what else then, I need
4 to know that.

5 MR. COLBORNE: Well, they include
6 probably thousands of charges under the Fish and Game
7 Act -- and don't worry, Mr. Freidin, I'm not going to
8 be cluttering the evidence here with proof of these, I
9 mean, you were the prosecutor on many of them - but it
10 includes a very wide range of Ministry of Natural
11 Resources activity which our evidence will be it has
12 had the effect of excluding members of the communities
13 that I represent from access to the resource.

14 MR. FREIDIN: My submission is simply
15 this, Mr. Chairman: To the extent that the activities
16 or the actions of the Ministry are alleged to have
17 caused an exclusion, they are not the activities of
18 access, harvest, renewal and maintenance, I would
19 submit that it would be an irrelevant line of
20 questioning and should not be permitted by the Board;
21 and, if you agree, I think the direction should be
22 provided in that regard.

23 MRS. KOVEN: Mr. Colborne, when I read
24 this question it seemed to me that it was a very basic
25 one and I haven't put the interpretation on it at all

1 that Mr. Freidin has, and that very basic question
2 seemed to be: Because of an activity such as
3 harvesting and one that might be taking place adjacent
4 to a reserve land for example, would that somehow
5 affect the native person's ability to hunt moose,
6 because there was a noisy harvest operation taking
7 place next to a reserve and that would infringe on the
8 ability of an individual in that community to trap a
9 moose or to trap other wildlife or to do whatever. And
10 that was a very basic interpretation that I made of
11 your question.

12 The second part of that was: Has the
13 Ministry ever looked at it in any sort of a research
14 framework to see exactly what the cost to the native
15 community has been of these sorts of activities in the
16 vicinity of lands where these communities are located.
17 And that was sort of the basic understanding that I had
18 about that question.

19 And now you are saying that that is not
20 the case, that it's a much more complicated, one along
21 the lines of what Mr. Freidin is saying.

22 MR. COLBORNE: It included what you
23 understood it to mean, but that was only one part of
24 it. It was intended to convey a much broader and more
25 comprehensive concern, yes.

1 MRS. KOVEN: A historical concern?

2 MR. COLBORNE: It would include the
3 historical component, yes.

4 MRS. KOVEN: And a concern about the
5 future?

6 MR. COLBORNE: Absolutely.

7 THE CHAIRMAN: Which includes elements of
8 entitlement.

9 MR. COLBORNE: I cannot bring evidence on
10 behalf of my clients that does not deal with
11 entitlement because that is the basis of their
12 political stance in relation to the proponent, but the
13 evidence would not necessarily be different than
14 evidence that might be called, for instance, by the
15 Municipality of Red Lake which is one of the parties if
16 the members of that municipality said that as a result
17 of the planning and management process they were, as a
18 community of people, denied access to the benefit of
19 the resource that surrounded them.

20 THE CHAIRMAN: On Crown lands.

21 MR. COLBORNE: On Crown land. I would not
22 be designing my cross-examination of Panel 17 to
23 confront or elicit questions about those Indians of the
24 witnesses as to Indian rights under treaties, that is
25 not my intention at all, and I'm not sure that they

1 would really be the appropriate witnesses to answer
2 those questions anyway.

3 THE CHAIRMAN: Well, Mr. Freidin, to the
4 extent that Mr. Colborne wants to question concerning
5 the activities of the Ministry on Crown lands within
6 the area of the undertaking and the impacts of those
7 activities on his clients, that is appropriate.

8 MR. FREIDIN: Mr. Chairman, firstly, to
9 the extent that those activities are other than the
10 four activities which have been referred to, my
11 submission stands, that they are not the proper matter
12 of cross-examination.

13 Mr. Colborne has indicated that he
14 intends to cross-examine on a number of matters which
15 include matters of entitlement as I understood him,
16 subject to your ruling, and matters which are not
17 restricted to the four activities. I repeat, that is
18 not the proper subject matter of the hearing.

19 Secondly, Mrs. Koven, you indicated that
20 your initial reading was that it was the effects sort
21 of next to a reserve which may have an impact. With
22 respect, again, that again was the very subject matter
23 of one of the lines of cross-examination of Mr. Hunter
24 in Panel 15. He asked Mr. Fleet and I think Mr.
25 Multamaki and maybe Mr. Bisschop: How do you deal with

1 planning activities next to reserves. All of those
2 issues as to how you go about planning or taking into
3 account the concerns of the native people, whether it's
4 next to their reserve or whether it's far away from
5 their reserve and related to trapping or hunting, are
6 matters dealing with the planning process which was
7 dealt with in full in Panel 15 and it should not, in my
8 respectful submission, find their way or weave their
9 way back into Panel 17 because it's sort of a catchall,
10 it's dealing with alternatives to the undertaking and
11 the appropriateness of class environmental assessment;
12 it's not, in my respectful submission, an opportunity
13 to rehash old evidence.

14 And I'm very concerned that the Board
15 provide the direction which is required now so that my
16 witnesses can prepare appropriately and we avoid me
17 jumping up and down and objecting based on the line of
18 cross-examination.

19 We have to know what it is they want, to
20 find out now whether it's proper cross-examination or
21 not.

22 ---Discussion off the record

23 THE CHAIRMAN: All right. Mr. Freidin, I
24 think the Board is going to reserve on providing these
25 directions overnight so that we can give it some

1 consideration.

2 MR. FREIDIN: Okay. And the last matter
3 then is No. 8 which is at page 62. It's in relation
4 to -- again, I guess I would just ask Mr. Colborne if
5 he could perhaps clarify what suggestion is being made.

6 I assume there is a suggestion being made
7 in the question when you say:

8 "those rights are recognized and provided
9 for in management planning."

10 Are you referring to Indian treaty rights
11 should be recognized and provided for in management
12 planning, do I interpret that correctly?

13 MR. COLBORNE: My reading of the
14 paragraph in question on page 62 is that under timber
15 management there is increased hunting and fishing and
16 other things. The question is: Does that mean that
17 the hunting and fishing of Indians is thereby
18 diminished?

19 MR. FREIDIN: As a result of the
20 increased pressure your by non-natives; is that what
21 you're saying?

22 MR. COLBORNE: Yes. We can either assume
23 that there is only so much there or we can assume our
24 competition between native and non-native.

25 THE CHAIRMAN: Well, that was partly

1 answered today I think in your absence where I think
2 some evidence came in today that the subsistence rights
3 for natives comes off the top.

4 MR. COLBORNE: Only very, very recently
5 and only partially and only because enforced by the
6 courts.

7 THE CHAIRMAN: Well --

8 MR. FREIDIN: That is not what the --

9 THE CHAIRMAN: Well, that is certainly an
10 area I think that could be explored, Mr. Freidin, if
11 that is what he is referring to.

12 MR. FREIDIN: I'm not familiar with the
13 evidence. I raised the question again, because if it
14 was an indirect way of attempting to get into what
15 those treaty rights were, or if you had to determine
16 what those treaty rights were before you could answer
17 the question, then the answer would probably be: We
18 can't answer that because the rights are not clear and
19 they are being dealt with, et cetera. So I just raise
20 it that that might likely be the position.

21 And if I could just go back to Ms. Kleer.
22 Can you advise whether you will be suggesting in your
23 cross-examination alternatives to the undertaking?

24 You indicated that the reference to
25 alternatives to was to the planning process and we had

1 that discussion. Will there be any suggestions that
2 there are other alternatives to the undertaking.

3 MS. KLEER: With respect to paragraph 3,
4 if you say that allocation is included and that becomes
5 an alternative to the undertaking to add in, to that
6 extent that is the only alternative to the undertaking
7 that we would be interested in.

8 MR. FREIDIN: Thank you.

9 So are we going to adjourn for the
10 evening or adjourn for -- we have that other issue that
11 we were going to deal with, Mr. Hanna's issue, you were
12 going to look at the transcript.

13 I have a suggestion, Mr. Chairman. It's
14 getting late --

15 THE CHAIRMAN: We weren't going to deal
16 with Mr. Hanna's issue tonight.

17 MR. FREIDIN: Oh. All right. Well,
18 good, because if you were going to deal with with --
19 you will get back to us tomorrow then on these matters?

20 THE CHAIRMAN: Well, we will try and get
21 back to you tomorrow on the issue regarding the scope
22 of Mr. Colborne's cross-examination.

23 We are going to have to review the
24 transcripts and we will get back to you within a
25 reasonable period of time on Mr. Hanna's issue, and

1 that is one that may require more elaboration on and
2 maybe submissions of other parties.

3 MR. FREIDIN: It may very well be that we
4 could deal with these issues during any time that the
5 Board may grant Ms. Murphy to prepare her final
6 re-examination questions, so that we use every possible
7 second.

8 THE CHAIRMAN: That's a possibility.

9 MS. SEABORN: Mr. Chairman, then just add
10 to the list for tomorrow I would still like to have
11 some clarification about what is intended with this new
12 area of concern planning package that is, as I
13 understood Mr. Freidin's comments earlier, was going to
14 be introduced in Panel 17. So perhaps that could be
15 left until tomorrow as well.

16 MR. FREIDIN: Sure.

17 THE CHAIRMAN: Okay.

18 MR. HANNA: Mr. Chairman, I just wasn't
19 clear there. Are you suggesting we are going to deal
20 with the purpose matter tomorrow?

21 THE CHAIRMAN: I doubt if we are going to
22 deal with the purpose matter tomorrow. We are going to
23 review the transcripts, I don't know if we will get to
24 it before tomorrow.

25 MR. HANNA: The only reason I rise is

1 because, unfortunately, I will not be here tomorrow and
2 I would advise the Board, unfortunately I don't expect
3 to be here.

4 THE CHAIRMAN: That's all right, we will
5 deal with that at some other point. We can certainly
6 deal with Mr. Colborne's concerns possibly tomorrow.

7 MR. FREIDIN: Right. And I would ask
8 other counsel in relation to the submissions that I
9 made with the two documents I provided, if they could
10 contact me and indicate whether there is an agreement
11 so we can determine whether we have to take any further
12 steps.

13 I will be at the office or I will come
14 over here first thing in the morning. Eight o'clock
15 tomorrow?

16 THE CHAIRMAN: 8:30.

17 MR. FREIDIN: 8:30.

18 THE CHAIRMAN: Thank you.

19 ---Whereupon the hearing adjourned at 7:15 p.m., to be
20 reconvened on Wednesday, November 29th, 1989,
commencing at 8:30 a.m.

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